



Save Our Groundwater

P.O. Box 182
Barrington, NH 03825

RECEIVED

August 24, 2004

AUG 24 2004

Water Council
c/o DES, Water Division
6 Hazen Drive PO Box 95
Concord, NH 03302-0095

04-17 WC

**Re: USA Springs, Inc. Large Groundwater Permit
No. LGWP 2004-0003**

Gentlemen:

In accord with Env-Wc 202.03, and on behalf of the Save Our Groundwater [SOG] Board of Directors, enclosed is and original and 20 copies of the Board of Directors Notice of Appeal. Also enclosed are the original and twenty copies of Attachments A through D of said Notice of Appeal.

Thank you for your attention to this matter.

Sincerely,

SAVE OUR GROUNDWATER

COPY
Bill McCann

Bill McCann, Member
Board of Directors

Enc.

Cc: Commissioner Nolin
Harry Stewart
Mark Beliveau, Esq.
E. Tupper Kinder, Esq.
Armand E. Hyatt, Esq.
Tony Soltani, Esq.
Assistant AG, Richard Head

State of New Hampshire

Department of Environmental Services
Water Council

In Re: Application of USA Springs, Inc. for a Large Groundwater Permit and
Approval of Bottled Water Source

SAVE OUR GROUNDWATER, BOARD OF DIRECTOR'S NOTICE OF APPEAL

The Board of Directors of Save Our Groundwater [SOG] hereby appeal to the Water Council on behalf of our members, the Decision of the Department of Environmental Services Water Division to grant a large groundwater permit to USA Springs, Inc and the Decision of the Department to deny SOG's Motion for an Adjudicative Hearing in accord with

RSA 541-A: 31. The Department issued the decision on the groundwater permit on July 1, 2004 and subsequently issued its denial of the motion for Adjudicative Hearing on August 9, 2004.

Under the provisions of RSA 21-O: 7,

"The Water Council shall hear and decide all appeals from department decisions relative to the functions and responsibilities of the division of water other than department decisions made under RSA 482-A relative to wetlands, in accordance with RSA 21-O: 14." [Emphasis added]

Under RSA 21-O: 14, hearings before the Water Council shall be conducted in accordance with the provisions of RSA 541-A, governing adjudicative proceedings. Appeals from decisions of the Water Council are in accordance with the provisions of RSA 541.

The review of applications for large groundwater withdrawals is a function and responsibility of the division of water. Thus the provisions of RSA 21-O: 7 mandate that the Water Council hear this appeal.

The decision by the division to deny a request for an adjudicative hearing appears to exceed the discretion of the division, in this instance and taken with the approval described above can only be reviewed by Water Council as provided by RSA 21-O: 7.

The conduct of an adjudicative proceeding before the Water Council under RSA 21-O: 7 is consistent with the provisions of RSA 485-C: 21 and regulation of the Department which provides that appeals from decisions on large groundwater withdrawal permit applications are to be conducted in accordance with RSA 541.

Following the decisions of the Water Council, an aggrieved party may appeal under the provisions of RSA 541 to the New Hampshire Supreme Court.

This appeal to the Water Council is based upon the reasons set forth in SOG's Motion for an Adjudicative Hearing dated July 30, 2004 [Attachment A] and its motion for Reconsideration dated July 30, 2004 [Attachment B]. In accord with Env-Wc 203.03 copies of the decisions of the Department dated July 1, 2004 [Attachment C] and August 9, 2004 [Attachment D] are attached here to. A copy of the Notice of Appeal has been forwarded to the Director of the Water Division and to the Commissioner of the Department.

Respectfully submitted
SAVE OUR GROUNDWATER
BOARD OF DIRECTORS

COPY
Bill McCann

By Bill McCann, Board Member
On behalf of the
Board of Directors Pro Se

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed first class, and postage prepaid to Michael Nolin, NHDES, Harry Stewart, NHDES, Mark Beliveau, Esq., Armand M. Hyatt, Esq. E. Tupper Kinder, Esq. Tony Soltani, Esq. and Assistant Attorney General Richard Head.

COPY
Bill McCann
Bill McCann, Board Member



- Attachment A -

Save Our Groundwater

P.O. Box 182
Barrington, NH 03825

July 30, 2004

Commissioner Michael P. Nolin
NH Department of Environmental Services
Box 95, 29 Hazen Drive
Concord, NH 03302-0095

**Re: USA Springs Inc. Large Groundwater Withdrawal Permit-No. .
LGWP 2004-0003**

Dear Commissioner Nolin:

Enclosed please find the SOG Board of Directors Motion for Adjudicative Hearing Under
RSA 541-A: 31 regarding the above captioned matter.

Thank you for your attention to this matter.

Sincerely,

SAVE OUR GROUNDWATER



Bill McCann, Member
Board of Directors

Enc.

Cc: Richard Head, Esq.
Mark Beliveau, Esq.
Armand Hyatt, Esq.
Anthony Soltani, Esq.
E. Tupper Kinder, Esq.

Save Our Groundwater

**P.O. Box 182
Barrington, NH 03825**

THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER DIVISION

July 30, 2004

In Re: Application of USA Springs, Inc. for a Large Groundwater Withdrawal Permit
No. LGWP 2004-0003

MOTION FOR ADJUDICATIVE HEARING UNDER RSA 541-A: 31

The Board of Directors of Save Our Groundwater [SOG], acting on behalf of the members of SOG, a community organization representing residents of Barrington, Nottingham and Northwood and other persons directly affected by the permit, hereby request an adjudicative hearing under RSA 541-A: 31 and in support thereof states as follows:

1. On July 1, 2004, New Hampshire Department of Environmental Services [NHDES], granted a large groundwater withdrawal permit to USA Springs Inc. [applicant]. This action followed hearings held to receive public comment and other review conducted under the provisions of RSA 485-C 1, 21 and regulations promulgated hereunder. See Env-Ws 388. SOG participated in these proceedings in opposition to the granting of the permit because of the extent and projected impact of the proposed withdrawal. The permit suggests that members of SOG residing within 7,000 feet of the USA

Springs, Inc. wells, an area of three miles across, may be impacted by the grant of this permit. [Large Groundwater Withdrawal Permit 2004-0003 at 5]

2. RSA 541-A: 31, I provides that:

“an agency shall commence an adjudicative hearing if a matter has reached a stage at which is it considered a contested case or if the matter is one for which a provision of law requires a hearing only upon the request of a party.”

Use of the word “shall” indicates that this is non-discretionary. Accordingly, the members of SOG through the Board of Directors are entitled to a 541-A: 31 adjudicative proceeding under RSA 541-A: 3 [I] because this matter has become a contested case as that term is recognized under New Hampshire Law since it is a proceeding in which legal rights, duties or privileges of a party are required to be determined by an agency after notice and opportunity to be heard. [RSA 541-: 1 (IV)] As declared by RSA 485-C: 1, groundwater in the communities of Barrington, Nottingham and Northwood is a local resource upon which the citizens of said communities rely for their viability.

3. Further, SOG is also entitled to an adjudicative proceeding under RSA 541-A: 31 [I] because this is matter in which a hearing must be provided upon the request of a party. Env-Ws 388.23 provides that:

“The Department shall provide the applicant with an opportunity for a hearing in accordance with RSA 541-A: 31 if the permit is denied.”

Although the regulation does not specify that persons directly affected by the grant of a permit are entitled to an adjudicatory proceeding, the regulation would violate principles of due process and equal protection unless it is interpreted to also allow access to an adjudicatory proceeding to person aggrieved by the grant of the permit.

The use of the word "shall" indicates that this too is a non-discretionary item. See 2 above.

Under Env-Ws 388.23, this request for an adjudicatory proceeding is timely because the NHDES regulations recognize that following the Department's initial determination to grant or deny a permit, the matter becomes a contested case to which the provisions of RSA 541-A: 31 are applicable.

4. The members of SOG are also entitled to an adjudicative proceeding under the provisions of RSA 541-A: 31 [II], which provides NHDES with the discretion to hold such proceedings, because an adjudicative proceeding is necessary for the proper adjudication of this matter.

RSA 481.1 declares that the policy for this State is that:

"The General Court finds that an adequate supply of water is indispensable to the health, welfare and safety of the people of the state and is essential to the balance of the natural environment of the state. Further, the water resources of the state are subject to an ever-increasing demand for new and competing users. The general court declares and determines that the water of New Hampshire whether located above or below ground constitutes a limited and, therefore, precious and invaluable public resource which should be protected, conserved and managed in the interest of present and future generations. The state as trustee of this resource for the public benefit declares that it has the authority and responsibility to

provide careful stewardship over all water laying within its boundaries. The maximum public benefit shall be sought, including the assurances of health, and safety, the enhancement of ecological and aesthetic values, and overall economic, recreational and social well being of the people of the state...,all levels of...government...shall comply with this policy....”
[Emphasis added]

RSA 485-C: 1 [II] declares that is the policy of the State that:

“...because groundwater is primarily a local resource, cities and towns should have the first opportunity to institute programs for groundwater protection within the scope of this chapter... The State, which has general responsibility for groundwater management in the public trust and interest, should develop groundwater protection programs within the scope of this chapter when such programs are not developed by a local entity”.
[emphasis added]

5. The Board of Directors of SOG assert that the public comment process has not been sufficient to enable NHDES to properly act on this matter as envisioned by its responsibilities under RSA 481:1 and RSA 485-C: 1. As a result, the Board of Directors of SOG believe that NHDES has failed to recognize and appreciate the facts contained in the record of these public comment proceedings and that an adjudicatory proceeding would result in an improved opportunity for NHDES to consider the USA Springs, Inc. large groundwater withdrawal permit application in the context of the law and regulations and the technical information contained in the record.
6. SOG asserts that NHDES has erred in granting the permit for a large groundwater withdrawal without affording interested parties an adjudicative hearing. The record of the proceeding indicates beyond any doubt that this is a matter of great public interest and that the granting of the permit has the

potential for significant impacts. Although RSA 485-C does not specifically provide for an adjudicatory hearing, RSA 541-A: 31 II is clear that an adjudicatory hearing can be provided. It states: An agency may commence an adjudicative proceeding at any time with respects to a matter within the agency's jurisdiction.' In the appropriate exercise of its jurisdiction, NHDES should afford the parties such a hearing on this major proposal.

7. SOG asserts that NHDES has an obligation to provide an adjudicatory. RSA 21-O provides for three councils to hold adjudicatory hearing, including the Water Council. RSA 21-O: 7 provides: "The water council shall hear and decide all appeals from department decisions relative to the functions and responsibilities of the division of water other than departmental decisions made under RSA 482-A relative to wetlands, in accordance with RSA 21-o: 14". This large groundwater withdrawal is obviously not within the exemption for wetlands. This is not inconsistent with RSA 485-C: 21 VI, which states, "Rehearing and appeals from a decision of the Department under this section shall be in accordance with RSA 541," because the decision of the Water Council, after its required adjudicatory hearing, would then be the decision of NHDES which is to be appealed to the New Hampshire Supreme Court pursuant TO RSA 541, if so desired by an aggrieved party .
8. Specifically, SOG believes that an adjudicative proceeding would provide an improved opportunity for a final decision based on the following considerations:

- a. NHDES is charged with protecting the public groundwater resource to the maximum public benefit, NHDES has misperceived its duty and granted a permit which is unsupported by the data generated by the applicant and which puts the public resource at risk protected only by the ability of NHDES to enforce conditions after adverse impacts are identified.
- b. The state of the record demonstrates that neither NHDES nor the applicant have correct and complete information regarding the source of the water to be extracted or the sustainability of the extraction of the quantity requested. NHDES has found that the applicant's information in this regard is incomplete and contradictory, and NHDES has not developed its own data to support granting the permit. For example, NHDES has found that after partial dewatering of the aquifer, water levels will stabilize and continuous dewatering will not occur. NHDES concedes that the applicant never reconciled its contradictory presentations of the conceptual hydrologic model. An adjudicatory proceeding will assist NHDES in evaluating the data relating to the recharge and groundwater flow issues.
- c. NHDES has proposed to issue a permit for a groundwater withdrawal, which is intended to serve as a source of bottled water where the data demonstrates that the source water is and has been contaminated since the pump test of November 2002, at a minimum, which will be

adversely affected, in place. An adjudicatory hearing will show how such action does not maximize public benefit.

- d. NHDES has failed to consider the impact of the issuance of this permit on future use even though the declared policy of the state requires it to do so. In fact, NHDES's decision to issue a conditional permit to take place perhaps in three to five years in the future without considering future uses is directly contrary to this policy. NHDES has not appreciated how changing conditions in the source water area, which is undergoing significant development and increasing demands on water use, may alter the results of the pumping test conducted in November 2002. Maximizing the public benefit requires not granting the permit until the withdrawal is to be implemented, in three to five years.
- e. NHDES failed to adequately consider its duty to protect prime wetlands under RSA 482-A: 11 [V] which provides:

“The Department shall not grant a permit with respects to any activity proposed to be undertaken in or adjacent to an area mapped, designated and filed as a prime wetland...unless the Department is able, specifically, to find clear and convincing evidence on the basis of all information considered by the Department and after public hearing that the proposed activity, either alone or in conjunction with other human activity, will not

result in significant net loss of any values set forth in RSA 482-A:1.

Even the consultant hired by NHDES, ENSR, found:

“The leakage analysis [of the applicant] is flawed and not based on conservative assumptions. Therefore, the conclusion of no adverse impact on the wetlands is poorly founded.” ENSR Report, March 19, 2003 at 16.

An adjudicative hearing would assist NHDES in evaluating these facts.

- f. NHDES has issued a permit without a proper determination of “need” as required by law and regulation. NHDES originally denied the applicants permit because of the “inefficient use of water”. [Item # 25 NHDES denial Aug. 12, 2003] Since that time no further data has been submitted to refute the findings of the August 2003 denial by NHDES. An adjudicative process would assist NHDES to evaluate the facts concerning the findings of “need” in the permitting process.
- g. NHDES has exceeded its authority, delegated to it from the legislature under RSA 485-C: 1, by issuing a “conditional permit” which NHDES recognizes cannot be implemented for a period which may exceed three to five years into the future. This exceeds NHDES’s authority and violates its own regulations because it attempts to commit for

private future use the public groundwater resource with out balancing the interests of competing future users.

- h. NHDES has failed to provide permit conditions which are protective of the public interests identified in RSA 481:1 and RSA 485-C: 1 and which are enforceable. For example, NHDES assumes that monitoring data will provide clear answers as to whether and to what extent adverse effects are occurring. In fact NHDES or the applicant has not contacted some well owners slated to be monitored. Monitoring results are likely to be ambiguous leading to disagreements and disputes as to the nature and extent of adverse impacts. Such an approach does not maximize the public benefit. An adjudicative hearing would assist NHDES in evaluating the limitations of its permit conditions.

- 9. NHDES, which under RSA 481:1 has been directed to regulate and manage large groundwater withdrawals for “ maximum public benefit” has unlawfully and unreasonably granted a permit to a private party to extract a public resource without requiring a documentation that the extraction is sustainable. NHDES found in denying the application on August 12, 2003

“Understanding the origin of water derived from a pumped well and its relationship to aquifer recharge, storage, and ultimately natural discharge is required by Env-Ws 388.20 6 [1] and 388.14 and is [a] fundamental element of an analysis to determine if the proposal is sustainable and will result in an adverse impact...”

Nevertheless, NHDES granted a permit in the absence of supporting data based solely on the inclusion of conditions, which are untested, and of uncertain enforceability. An adjudicative hearing would assist NHDES in resolving this inconsistency.

10. In conclusion, SOG asserts that an adjudicative proceeding will allow for a fair and thorough evaluation of the above issues, which have not been appreciated by NHDES. The proceeding will provide a process which will lead to a decision which is fair to the applicant, protective of the public interest and permit a better decision for review should any aggrieved party wish to exercise their rights of appeal.
11. The conduct of an adjudicative proceeding will not be prejudicial to the applicant or any party because it is recognized that the large groundwater withdrawal permit, by its own terms, cannot be implemented for what is estimated to be several years into the future.
12. SOG will also be filing in the alternative, a motion for rehearing in accordance with the provisions of RSA 485-C and RSA 541.

Wherefore, SOG respectfully requests that NHDES grant this Motion for an Adjudicative Hearing under the provisions of RSA 485-C and regulations promulgated thereunder ENV-Ws 388.23 and the provisions of RSA 541-A: 31.



- Attachment B -

Save Our Groundwater

P.O. Box 182
Barrington, NH 03825
www.saveourgroundwater.org

HAND-DELIVERED JULY 30, 2004
TO THE NH DEPARTMENT OF ENVIRONMENTAL SERVICES, CONCORD


July 30, 2004

Michael P. Nolin, Commissioner
NH Department of Environmental Services
P.O. Box 95
29 Hazen Drive
Concord, NH 03302-0095

Dear Commissioner Nolin,

Enclosed please find two copies of Save Our Groundwater's "Motion for Rehearing Under RSA 485-C:21, VI and RSA 541" regarding the Department's July 1, 2004 decision to issue a Large Groundwater Permit to USA Springs, Inc., Permit No. LGWP 2004-0003.

Thank you.

Sincerely yours,

Denise Hart, Clerk
Board of Directors

cc: E. Tupper Kinder, Esq., Town of Nottingham
Mark Beliveau, Esq., Town of Barrington
Assistant Attorney General Richard Head
Armand M. Hyatt, Esq., USA Springs, Inc.
Tony Soltani, Esq., USA Springs, Inc.

Save Our Groundwater

P.O. Box 182
Barrington, NH 03825

THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF ENVIRONMENTAL SERVICES WATER DIVISION

Application of USA Springs, Inc. for a Large Groundwater Permit,
Permit No. LGWP 2004-0003

July 30, 2004

MOTION FOR REHEARING UNDER RSA 485-C: 21, VI AND RSA 541.

On July 1, 2004, the New Hampshire Department of Environmental Services [the Department] issued its decision statement [Decision] and Large Groundwater Permit No. LGWP 2004-0003 to USA Springs, Inc. Pursuant to RSA 485-C: 21, VI and RSA 541, Save Our Groundwater [SOG], a community organization representing residents of Barrington, Nottingham, Northwood and other persons directly affected by the permit, hereby requests a stay of decision and a rehearing and reconsideration of the Department's decision and permit for the reasons set forth below. In addition, SOG hereby adopts as its own, and incorporates by reference as fully as if set forth in full in this motion, each and every objection and basis for rehearing set forth in the Motions filed in this matter by the Town of Barrington, The Town of Nottingham's Motion for Rehearing in accordance with the provisions of RSA 485-C and RSA 541, The Town of Nottingham Selectman's Motion for Adjudicative Hearing Under RSA 541-A: 31 and the motion filed by James H. Page Jr. on July 7, 2004 [Letter of James H. Page, Jr. to DES Commissioner Michael P. Nolin dated 7/7/04]

1. USA Springs, Inc. has failed to show that its application for a permit meets the need requirements as set forth in Env-Ws 388.05 and RSA 485-C.

RSA 485- C requires the agency to adopt rules that shall include “requirements relative to conservation management plans which demonstrate the need for the proposed withdrawals, to be submitted by the person seeking approval for a withdrawal”. (See RSA 485-C: 4 XII b).

Env-Ws 388 requires the applicant “ to prepare a water conservation plan” and a description of need to demonstrate the efficient use of, and need for, the proposed withdrawal in the permit application” in accord with Env-Ws 388.10 for the 10 year duration of the permit.” Env-Ws 388.10 states in part “The application shall include: the conservation management plan and description of need prepared in accordance with Env-Ws-388.05.” The need was denied in the Department’s August 12, 2003 decision [Denial] as follows; “a permit cannot be issued for a withdrawal volume for an amount of water that exceeds the amount the applicant has demonstrated a need for while implementing water conservation measures, as this would allow for the inefficient use of water.” On page 12 of the July 1, 2004 Decision and Findings the Department claims “February 2003 Final Report and supplemental material dated September 11, 2003 adequately...demonstrates a need for the proposed withdrawal.” However, the applicant has provided no new information. The Department approved the need as set out in the February 2003 Application [Application]. The Supplemental data referred to by the Department is a Motion to Reconsider filed by USA Springs, Inc. on September 11, 2003. There is no record of any other data being submitted, despite the statement of the Department.

The need was denied in the Department’s August 12, 2003 decision [Denial] and yet with no new information being provided by the applicant, the Department approved the need as set out in the February 2003 Application [Application]

2. During the permit application process, the Department held *ex parte* meetings with representatives of USA Springs, Inc. and issued communications to USA Springs, Inc. without providing copies to other parties such as the Towns of Barrington, Nottingham and Northwood, in violation of RSA 541-A: 36.

For example, the letter sent to Manu Sharma from Anthony Giunta at the Department on April 11, 2003 included twelve pages of technical comments that were sent only to the owner of USA Springs, Inc. and his attorney and three DES staff, the Department of Justice attorney for the Department and no other interested parties or towns. [Letter from Anthony Giunta, administrator of the DES Water Supply Engineering Bureau to Manu Sharma of Gradient Corp. dated April 11, 2003]

SOG had expressed its concern about this type of activity to Commissioner Michael Nolin on June 19, 2003. [Save Our Groundwater to DES Commissioner Michael Nolin dated June 19, 2003]

The practice of having meetings Ex Parte has continued after the December 29, 2003 MyKroWaters, Inc. Preliminary Application filed on behalf of USA Springs Inc. On January 14, 2004 an Ex Parte meeting was held with the following attendees: M. Wimsall, R. Dickson, J. Delucia, [Just Cause] F. Rotondo, D. Farnsworth, W. Murray and Tony Giunta. At one of these meetings it is reported that Keith Herman & the Governor's Business Development Liaison attended. [Water Advisory Committee Minutes dated April 5, 2004, page 4 of 5] These meetings held in violation of RSA 541-A, deprived SOG and representatives of the Towns the opportunity to participate fully as the application process begins for a second time.

3. The Department, through its Attorney, and Attorneys for the Department of Justice (NHDOJ), routinely denied documents to members of SOG, members of the public, members of the New Hampshire General Court and attorneys for the towns, in violation of RSA 91-A and the New Hampshire Constitution. [Letter to State Representative Gibson from Attorney Gretchen Rule dated December 15, 2003]
[Letter to State Representative Gibson from Attorney Richard Head dated December 15, 2003]
4. Staff of the Department failed to conduct the permitting process in a fair and open manner in violation of SOG's due process rights pursuant to the New Hampshire and Federal constitutions. Staff mislead members of SOG, including residents whose property will be impacted by the permit approval, as well as officials from the communities effected by the permit process. [Water Advisory Committee Minutes dated April 5, 2004]
5. The activities of the Department and USA Springs, Inc. during the permitting application process has diminished property values of SOG members and others by [a] causing a documented drop in water levels of individual and public wells, and [b] by the illegal taking of property resulting from the Department's declaring property to be within a wellhead protection area, which limits use.

In its 2 July decision, the Department "finds that the information in the application demonstrates that USA Springs' withdrawal will lower the water level in private wells at distances of up to 7000 feet from the site. The Department also finds that the partial dewatering of the aquifer may cause some adverse impacts initially, as more susceptible water supplies (wells with pumps with limited capacity and/or shallow depth settings) are initially

dewatered.” This public declaration of loss of water levels puts on record a condition that influences the sale and future use of a person’s property.

To the best of our belief and knowledge, owners of the private wells slated for monitoring in the permit were not contacted prior to issuance of the permit by the Department to gain their permission for this inclusion. The Department jeopardized the present and future value of these properties by this designation. The Department also abrogated its responsibility to insure that proper monitoring was established and committed to before issuing the permit.

The establishment of a wellhead protection area by the Department constitutes an illegal taking of property because this protection zone will influence current and future possible uses of these properties. For example, in a September 21, 2003 Portsmouth Herald article “Towns Guard Water Supplies” the Northern Springs, Inc. bottled water plant in Brentwood, NH, an operation that at the time withdrew a total of 89,280 gallons/day of water, was cited as recently winning a lawsuit to keep a neighbor from building on an adjacent lot after the town’s Zoning Board of Adjustment had approved a variance for a building project. Additionally, the article noted that the company’s owner later sent Selectmen a list of concerns about activities on other nearby properties. [Portsmouth Herald article “Towns Guard Water Supplies” dated September 21, 2003]

While the Department goes on to claim that Condition 6 (e) of the permit ensures that withdrawal by USA Springs, Inc. will operate in a sustainable manner that does not harm the public and ecosystem health and will maintain the conditions of the permit, the public record concerning this case and the Department’s reliance on the company’s monitoring of its operations proves otherwise. The company has already committed wetlands violations that required mitigation and its November 2002 pump test drew carcinogenic contaminants further into the aquifer with a delay of several months before it was reported to the Department. Deep and continuing budget cuts to the Department make it unlikely that it will be able to assign staff at a sufficient level to properly monitor this case. By relying on self-monitoring, the Department has assigned the fox to guard the henhouse. [Water Advisory Committee Minutes dated April 5, 2004, page 5]

6. The Department has failed to consider the impact of the issuance of this permit on future use, even though the declared policy of the state requires it to do so. In fact, the Department decision to issue a conditional permit to take place perhaps in three to five years in the future without considering future uses is directly contrary to this policy. The Department has not appreciated how changing conditions in the source water, which is undergoing significant development and increasing demands on water use, may alter the results of the pumping test conducted in November 2002. Maximizing the public benefit

requires not granting the permit until the time the withdrawal is to be implemented.

7. In reviewing USA Springs, Inc.'s second permit application, the Department failed to take into consideration the impact of more than 100 new homes, some of which are built, with the majority currently under construction or soon to be under construction. These homes are all located within 1.5 miles of the USA Springs, Inc. site.

The subdivisions are:

- Brooks Crossing: Approved for 50 homes
- The Highlands: Approved for 42 homes; in process of construction
- Unnamed subdivision: Approved for 8 homes
- Additional homes built on Route 4 since 2002: 11 homes
- Additional lots created on Merry Hill Road since 2002: 2 building lots

We believe the failure by the Department to consider the impact on the wells of these private homeowners, the potential impact to the wetlands and the impact on the total quantity of water available to be safely withdrawn as being grossly negligent. These homes were not in existence at the time of the November 2002 pump test and were not considered as part of the review. All quantity and quality measurements and monitoring efforts should be declared null and void as they do not incorporate this significant increase in water demand in close proximity to the USA Springs, Inc. site. The Department's recent decision, 4.1.2 Impact to Water Users, states "USA Springs monitored 30 private wells during the withdrawal test. Private wells were selected for monitoring based upon 1) Proximity to the proposed withdrawal; 2) Orientation to the withdrawal; 3) Type of well; and 4) Accessibility as determined by the well owner. Representative well types were monitored to the south, west and east of the withdrawal site." This limited amount of monitoring is neither sufficient nor current.

8. Lamprey River - The Department failed to respond to the comments of the Lamprey River Advisory Committee, such a response is required by RSA 485-C and the Administrative Procedures promulgated by RSA 541-A. Such a failure impacts the rights of members of SOG, as well as others in area of the permit application.

We disagree with the Department's statement regarding the Lamprey River, a designated Wild and Scenic River by the United States government, which states in Section 5.6 Little River and Lamprey River "The USA Springs site will not cause a measurable impact in water that flows in Mendums Pond, the Little River, or the Lamprey River." We do agree with the next statement, "However, the cumulative impact of all the stresses that alter the natural occurrence of water in the watershed will impact seasonal high and low streamflows."

Since the pump test of November 2002 there has been a significant increase in the amount of home building within 1.5 miles of the USA Springs, Inc. site. The water needs of these new residents will likely produce additional stresses on the natural occurrence of water in the watershed (see #7).

We share the concern with the U.S. Department of the Interior's National Park Service statements submitted to the Department on May 21, 2004. In this memo, Jamie Fosburgh, Rivers Program Manager, states, "The National Park Service is very concerned about this proposed withdrawal and its potential to negatively impact flows in the Lamprey River and its tributaries. We are concerned that basic issues of science do not appear to have been adequately addressed. We are also concerned that DES' responsibilities to ensure protected flows for the Lamprey River have not been adequately addressed, even as DES prepares to embark on an ambitious instream flow pilot study for the Lamprey, and is well aware of the extreme low flow conditions that stress the river and basin. Finally, we are concerned that RSA 483's prohibition against interbasin transfers has not been addressed through the review process."

Again, the Department failed to respond to the concerns raised as required by Law and Administrative Rules, to the detriment of SOG members as well as other parties. [Letter from Jamie Fosburgh, program manager, U.S. Department of Interior to Brandon Kernen, DES Water Supply Engineering Bureau dated 5/21/04]

9. The Department failed to respond to SOG's demonstration of the adverse impact, as defined in RSA 481-C, that has occurred during the permit application process and that will continue to occur with issuance of the permit.
10. By its decision and issuance of the permit, the Department has persistently failed to uphold the Doctrine of Public Trust, as mandated in the preamble of RSA 485-C, "The state... has general responsibility for groundwater management in the public trust and interest..." [RSA Section 485-C: 1 (II)]. New Hampshire Law recognizes that certain water resources are held in public trust, for the benefit if the public, and not for private gain. [Opinion of the Justices (Public Use of Coastal Beaches), 139 NH 82 (1994)]
- 11.

In its decision, the Department determined that the consideration of the public trust doctrine was not within its discretion because "many of the comments submitted to the Department argue that the state can not allow a large withdrawal of water for 'private for profit' use because it holds the water in 'public trust' and 'that such a proposed withdrawal is inherently unreasonable.'" [Decision at 52] The Department ignored comments regarding the public trust doctrine that were not related to profit issues.

For example, see letter of Denise Hart to Anthony P. Giunta, dated May 24, 2004, submitted as part of the public comment period for this application, “I ask DES to review the company’s latest application in the light of NH’s groundwater protection law that holds that both surface and groundwater are integrated resources held in the public trust. You have an opportunity—just by upholding your previous findings in this case—to strengthen our state’s water protection laws for present and future generations of all life.” [Denise Hart letter to Anthony P. Giunta, director, DES Waste Management Division dated May 24, 2004]

See also letter from Filson H. and Shirley R. Glanz, dated May 20, 2004, submitted as part of the public comment period for this application, “We are again writing to express how important it is to protect the waters (surface and ground) of the State of New Hampshire as a “common” of the citizens of the State—for use of all citizens. This can only be done by denying the application of USA Springs to pump water from a point that affects at least three watersheds in the greater Seacoast area.” [Filson H. and Shirley R. Glanz letter to Tony Giunta, Department of Environmental Services dated May 20, 2004]

As these comments show, the public raised substantial public trust arguments that were not related to the issue of public for profit use, but rather raised important questions about the common public good and water. The Department has, however, apparently adopted as its guiding principle the notion that the economic individual with “the biggest pump wins.” See Robert Glennon, Water Follies: Groundwater Pumping and the Fate of America’s Fresh Waters (2002) at 210.

In its decision, the Department also relied heavily on the May 1, 2001 Nottingham Zoning Board of Adjustment [ZBA] approval of USA Springs, Inc.’s application for a zoning variance to construct and operate a bottled water business on its property. USA Springs’ application received by the ZBA on April 14, 2001, consisted essentially of one sentence “To permit the following: the construction and operation of a Water Bottling Facility in the Residential Zone.” [Town of Nottingham, NH Zoning Board of Adjustment hearing application dated April 4, 2001 and received April 14, 2001, page 1]

The ZBA took up the USA Springs application a little more than two weeks later. The ZBA reviewed USA Springs’ application at its May 1, 2001 meeting as the first item of business at which time the company’s representatives presented additional information. The meeting was called to order at 7:15 p.m. and adjourned at 10 p.m. In addition to considering USA Springs’ application at the meeting, the ZBA also reviewed its mail and reviewed and approved the minutes of its previous meeting. Thus, the maximum amount of time that the ZBA could have devoted on May 1 to

review the USA Springs' application would have been only 2 hours and 45 minutes. In fact, the time devoted to the review was less than that because the ZBA also reviewed its mail and minutes that night. [Town of Nottingham, NH Zoning Board of Adjustment May 1, 2001 minutes and Garrison Place Real Estate Investment Trust Hearing Application dated April 4, 2001 and received April 14, 2001]

Thus this all volunteer citizen board made the decision to grant the variance based upon a sparse and incomplete application and a brief oral presentation and review. The variance was also granted without Department input and at a time when the full scope, scale and impact of USA Springs' project had not been revealed.

For the Department to seek cover under the ZBA's action betrays the Department's charge to manage groundwater in the public trust and interest. The Department claimed "[I]t is important to note that it is very unlikely that a large groundwater withdrawal permit would have ever been filed with the Department had Nottingham not granted a zoning variance for the development of USA Springs' property. Without this variance, USA Springs could not have operated a bottled water business on its property." [Decision at 53]

In attempting to hide behind the ZBA, the Department abrogates its responsibility to ensure that groundwater protection programs are developed within the scope of New Hampshire's Groundwater Protection Act.

As the Department's own mission states, "The mission of the Department of Environmental Services is to help sustain a high quality of life for all citizens by protecting and restoring the environment and public health in New Hampshire."

12. International Trade – USA Springs, Inc. and/or Garrison Place Real Estate Investment Trust has stated in public meetings, on application forms and in its Articles of Incorporation that it intends to sell the water it bottles both domestically and internationally. The Department misconstrues the issue of international trade as being the state's ability to prohibit the sale of water internationally. This is not the issue raised by SOG. Rather, the issue SOG raised is that of the state's ability to modify or withdraw a permit once USA Springs [or later owners of its license] begins the exportation and sale of water.

First, international trade agreements such as the WTO and NAFTA provide that quantitative limits on export of tradable commodities are prohibited. Although there are exceptions for some environmental measures, they would probably not apply to groundwater, which is considered a renewable resource. If the Department were to reduce the quantity of water which the applicant

were permitted to pump, thereby reducing the amount it could export, the state could be required to place comparable restrictions on domestic use.

Second, the Department relies on information provided by the New Hampshire Department of Justice in 2002 in an informal opinion. This information ignores several aspects of international trade rules that have a bearing on the application.

In a letter dated May 10, 2002 and received by then-Congressman Sununu's office May 20, 2002, the United States Trade Representative Robert B. Zoellick presented information that contradicts the informal opinion of the New Hampshire Department of Justice's attorney. Specifically, the Zoellick letter states: "...[O]nce local authorities decide to permit bulk water to be extracted from an aquifer, bottled, and sold as an article of commerce, WTO rules would likely apply to the sale of that article of commerce." [Letter of Robert B. Zoellick to Honorable John Sununu dated May 10, 2002]

Many aspects of water bottling would be considered "services" under international trade rules, and would come under the terms of the WTO's General Agreement on Trade in Services. The NH Department of Justice's Advisory Opinion ignores GATS rules, which do not allow for environmental exceptions.

Since the issuance of its Advisory Opinion, the United States has signed and ratified additional trade agreements with Singapore, Chile, and Morocco. Other agreements with Australia and with the Central American countries have been completed with ratification pending. A full and current understanding of the impact of trade rules with regards to the USA Springs, Inc. project would have to take these new agreements into account as well. Other negotiations such as changes of WTO rules and the establishment of a Free Trade Area of the Americas are ongoing. Until such time as the DES has completed a comprehensive and balanced assessment of the potential impacts of trade rules on the state's ability to enforce its own regulations with regard to international trade in bottled water, the USA Springs, Inc. permit should be stayed.

13. Misleading and discriminatory actions by the Department. SOG is concerned that the Department engaged in an ongoing practice of misleading parties to the permitting process. At the April 5, 2004 meeting of the Water Advisory Committee conflicting statements were made regarding the pending process. At one point answering a question about staff to monitor the site, Mr. Giunta states, "we have staff to monitor." At another point of the meeting Mr. Giunta states, "our budget has been slashed. Not feasible to notify all of NH by email." in an answer as to why email updates had stopped. During the same meeting Mr. Giunta was asked about process and additional pump tests. He responded, "There will be a pump test with both sites running before a permit

is issued. No work scope approval is necessary on everything they do. However, a work scope approval will be necessary for a two-site pump test. Not 'remediation'. Applicant will clean up". [Minutes Water Advisory Committee, April 5, 2004 page 2 and 5]

When asked why there were not two pump tests, one on each site, after the permit was issued, Mr. Giunta said the two pump tests were only necessary if the contamination was mitigated, not cleaned up. [NHPTV NH Outlook 7/7/04 #980]

Clearly the statements made on April 5, 2004 were misleading. What makes this matter worse is the fact that not only SOG was being misled by statements of the Department, but also members of the New Hampshire General Court are being given misleading statements in black and white. In a January 9, 2004 letter to Rep. John Gibson, both Anthony Giunta, director of the Waste Management Division of the Department, and Harry Stewart, director of the Water Division of the Department tell Representative Gibson the same information that was verbally given to member of SOG. "Based on experience at other sites, DES anticipates this will require long term analysis of an active groundwater remediation system at the Harnum site [a/k/a Just Cause Realty site] (without pumping at USA Springs) to demonstrate groundwater contamination control, followed by a withdrawal test at the USA Springs site with the remediation system in operation." [Letter from Anthony P. Giunta, director, DES Waste Management Division and Harry T. Stewart, P.E., director, DES Water Division to The Honorable John M. Gibson, NH House of Representatives dated January 9, 2004 at page 3]

Thus, not only were parties such as SOG were being given bad information or conflicting information, but also members of our Legislative Branch of Government were getting incorrect or misleading information. Even the applicant [USA Springs, Inc.] had concerns about the type information they are receiving from the Department. [See USA Springs Inc. Motion for Rehearing dated September 11, 2003]

The Regulations governing the submission of information requires the applicant to submit data which is (1) True, (2) Complete; and (3) not misleading. [See Env-Ws 388 at 388.04 g] SOG had thought that such requirements were imposed on the Department. These actions of the Department along with those in 4 above have flawed the process to the point that it is absolutely necessary to grant any and all Motions to Reconsider at this time.

14. SOG further asserts that the Department has erred in granting the permit for a large water withdrawal without affording the interested parties an adjudicatory hearing. The record of proceeding indicates beyond any doubt that this is a matter of great public interest and that the granting of the permit has the

potential for significant impacts. Although RSA 485-C does not specifically provide for an adjudicatory hearing, RSA 541-A: 31 II is clear that an adjudicatory hearing can be provided. It states: “An agency may commence an adjudicative proceeding at any time with respect to a matter within the agency’s jurisdiction.” In the appropriate exercise of its jurisdiction, the Department should afford the parties such a hearing on this major proposal. Moreover, such a proceeding is required by the due process clauses of the New Hampshire and Federal constitutions.

In addition, SOG asserts that the Department has an obligation to provide an adjudicatory hearing. RSA 21-o: 7 IV provides: “The water council shall hear and decide all appeals from department decisions relative to the functions and responsibilities of the division of water other than departmental decisions made under RSA 482-A relative to wetlands, in accordance with RSA 12-c: 14.” This large water withdrawal permit decision is obviously not within the exemption for wetlands.

This is not inconsistent with RSA 485-C: 21 VI, stating that: “Rehearing and appeals from a decision of the Department under this section shall be in accordance with RSA 541,” because the decision of the Water Council, after its required adjudicatory hearing, would then be the decision of the Department which is to be appealed to the New Hampshire Supreme Court pursuant to RSA 541.

Furthermore, an attempted appeal to the Supreme Court without adjudicatory hearing is, at best, problematic, because without such a hearing there is not a record of evidence on which meaningful court review can occur. With such a record, the Court will have testimony and exhibits, along with a decision that discloses which evidence was found probative and sufficient so it can then determine whether the decision was in fact supported by substantial evidence. In order, therefore, to make the granted right of appeal to the Supreme Court by RSA 541 meaningful, it is essential that the Department afford the adjudicatory hearing that RSA 21-O: 7 VI provides for “all decisions” made by the Department.

Wherefore, for the reasons set forth above, SOG respectfully requests that the Department:

1. Pursuant to RSA 541:5, stay within 10 days the decision statement dated July 1, 2004, and issued July 2, 2004.
2. Grant SOG’s Motion for Reconsideration forthwith;

3. Consider the information presented above, and hold a rehearing on the issues.

Respectfully submitted,

SAVE OUR GROUNDWATER (SOG)

By the Board of Directors, Pro Se

Pat Newhall
Pat Newhall, Barrington

Barbara Fitzgerald
Barbara Fitzgerald, Nottingham

Denise Hart
Denise Hart, Barrington

Bill McCann
Bill McCann, Dover

Olivia Zink, Manchester

Date:

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Save Our Groundwater's Motion for Rehearing have been forwarded this day, July 30, 2004, by first-class mail, postage prepaid, to Tony Soltani, Esq., Armand Hyatt, Esq., Mark Beliveau, Esq., E. Tupper Kinder, Esq. and Assistant Attorney General Richard Head.

Denise Hart

Denise Hart
Clerk, Save Our Groundwater

Save Our Groundwater Motion for Rehearing Appendices
July 30, 2004

Introduction. 7/7/04 Letter from James H. Page, Jr. to DES Commissioner Michael P. Nolin

2. 4/11/03 Letter from Anthony Giunta, administrator of the Department's Water Supply Engineering Bureau to Manu Sharma of Gradient Corp.

6/19/03 Save Our Groundwater to DES Commissioner Michael P. Nolin

3. Letter to State Representative Gibson from Attorney Gretchen Rule dated 12/15/03

Letter to State Representative Gibson from Attorney Richard Head dated 12/15/03

4. Senator Dick Green's Water Advisory Committee Minutes 4/5/04

5. Portsmouth Herald article "Towns Guard Water Supplies" 9/21/03

Minutes of April 5, 2004 Senator Green's Water Advisory Committee page 5

8. Letter from Jamie Fosburgh, program manager, U.S. Department of Interior to Brandon Kernen, DES Water Supply Engineering Bureau dated 5/21/04

10. Denise Hart letter to Anthony P. Giunta, director, DES Waste Management Division dated May 24, 2004

Filson H. and Shirley R. Glanz letter to Tony Giunta, Department of Environmental Services dated May 20, 2004

See Robert Glennon, Water Follies: Groundwater Pumping and the Fate of America's Fresh Waters (2002) at 210.

Town of Nottingham, NH Zoning Board of Adjustment hearing application dated April 4, 2001 and received April 14, 2001, page 1

Town of Nottingham, NH Zoning Board of Adjustment May 1, 2001 minutes and Garrison Place Real Estate Investment Trust Hearing Application dated April 4, 2001 and received April 14, 2001

11. Letter of Robert B. Zoellick to Honorable John Sununu dated May 10, 2002

12. Minutes Water Advisory Committee, April 5, 2004 page 2 and 5

NHPTV NH Outlook 7/7/04 #980

Letter from Anthony P. Giunta, director, DES Waste Management Division and

Harry T. Stewart, P.E., director, DES Water Division to The Honorable John M. Gibson, NH
House of Representatives dated January 9, 2004 at page 3

State of New Hampshire
Department of Environmental Services
Water Supply Engineering Bureau
PO Box 95, 6 Hazen Drive
Concord, NH 03302-0095

7/7/04

Attn: Mr. Michael P. Nolin, Commissioner

Re: Large Groundwater Permit
No. LGWP-2004-0003

COPY

Dear Commissioner Nolin,

It is my understanding that your DES office issued the above identified permit to USA Springs, Inc. of 9 Pelham Drive, Pelham, NH on July 1, 2004.

This person, James H Page Jr., owns property at 187 Old Turnpike Road, Nottingham, NH. This property shares a well with Thomas and Robin Marshall, who own property at 189 Old Turnpike Road, Nottingham, NH. This well is on the common property line between the two parcels. It has been in operation for some 42 years. This is not a single residential well servicing an individual residence. It services two distinct, separately owned parcels as a community or public well.

In July of 2001, I spoke at a public forum and brought this to the attention of your DES representatives and USA Springs, Inc. representatives present at the hearing, including the owner of record, Mr. Rotondo. After speaking, I discussed this directly with Mr. Brandon Kernan, Hydrologist, of your DES office.

This was again brought to the attention of your office in a letter to Judy Maloney of your DES office along with other general concerns.

In 2002, before USA Springs, Inc. commenced test pumping, I forwarded a letter to Mr. Brandon Kernan of your DES office. It again stated my concerns and comments regarding this community well. I also spoke to Mr. Kernan via phone. This well was subsequently identified as a test site by DES.

I spoke with Aires Engineering in November, 2002 via phone at their office and in the field and specifically requested that this well be identified as a community water source servicing two distinct properties. This person and Thomas Marshall granted permission to allow monitoring of this location.

I take exception to page 3 of 8 of your permit listing this well location under the heading of private wells with no annotation showing this location as a community/public source.

I take exception to Table 1: Trigger Water Level Elevations for USA Springs Large Groundwater Withdrawal Permit 2004-2003. This table identifies this well on Map 2, Lot 5 as being allowed a 180 day No-Recharge Drawdown to El 357. Stage 1 Trigger Level is El 342.

Test information on this well indicates static head at El 405+/- . Simple daily drawdowns from individual pumping requirements draw this head down an average of 30 ft. Assuming the demands of two properties concurrently (ex. (2) showers), simple math would drop the head 60 feet or 90 gals equivalent. From your Table 1, at a head of

El 357, the drop would put the static head at El 297. If trigger was reached at Stage 1, the static head could be at El 282. Pump level in this well is El 267+/- . This leaves only a 15 ft. head or about 23 gals of water. This well will be non functional. It can very easily be deduced that this well will recover very slowly as it is a low yield well in and of itself. USA Springs, Inc. pumping will slow recovery and flatten the gradient much more.

By DES Env-Ws 388.18 Adverse Impact Criteria (c) (2) b. " ... the adverse impact shall be any reduction in the ability to produce water." By discussion with your own DES officials that I spoke with in the past, this wells ability to produce water cannot be impaired or altered in any manner by the operations and actions of USA Springs, Inc. pumping operations.

I feel that I have given more than ample notice to all parties involved in this permitting process of the conditions at this well location. It is apparent that this has not been adequately dealt with by the DES or by USA Springs, Inc. Consequently, I object to your findings in your permit and ask for this matter to be dealt with accordingly under the current DES WS rules. This letter shall serve as a notice of appeal as given in 6.0 p78 of 78 of your decision regarding this well location at 187/189 Old Turnpike Rd.

Please advise this person, property owner James Page, property owner Thomas Marshall, and the Nottingham Board of Selectmen within 10 days of receipt of this letter as to how the DES intends to handle this matter.

I may be reached by mail at: James H. Page Jr.

PO Box 1254

Dover, NH 03821-1254

or email jpage@comcast.net

Very Truly Yours,

COPY
James H. Page Jr.

Thomas Marshall

COPY
Thomas Marshall

cc Town of Nottingham Board of Selectmen
Mr. Anthony Giunta, DES



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-5171



April 11, 2003

Manu Sharma
Principal
Gradient Corporation
238 Main Street
Cambridge, Massachusetts 02142

Subject: USA Springs – Final Permit Application Report Dated February 4, 2003

Dear Mr. Sharma:

The New Hampshire Department of Environmental Services (DES) has reviewed the document titled "Large Groundwater Withdrawal Report – Proposed USA Springs Bottling Plant" (report) dated February 3, 2003 and received on February 4, 2003. This document was submitted by you, on behalf of USA Springs, Incorporated (USA Springs), in order to fulfill the requirements of New Hampshire Administrative Rules Env-Ws 388-Major Large Groundwater Withdrawals and Env-Ws 389-Groundwater Sources of Bottled Water to obtain approval to withdrawal up to 310,000 gallons of groundwater a day for the purpose of bottling water.

The purpose of this letter is to provide USA Springs with preliminary comments on the report relative to the requirements of Env-Ws 388 and 389. As an attachment to this letter, DES has provided technical comments regarding the report. Please note that no comments are provided pertaining to issues related to groundwater contamination and the ongoing investigation at the adjacent K&B Realty site. Consistent with the time extension granted by DES, it is anticipated that supplemental information or analysis concerning any contamination source(s) will be provided after additional information is available.

Should you have any questions, please do not hesitate to contact the undersigned below.

Sincerely,

Brandon Kernen, P.G.
Hydrologist
Water Supply Engineering Bureau

Anthony P. Giunta, P.G.
Administrator
Water Supply Engineering Bureau

Enclosure

cc: F. Rotondo, USA Springs
G. Smith, Esquire
R. Head, NHDOJ
S. Pillsbury, DES
H. Stewart, DES
R. Monaco, DES ✓

**Preliminary Technical Comments of the
New Hampshire Department of Environmental Services – April 11, 2003
USA Springs Final Permit Application Report Dated February 4, 2003**

1.0 Conceptual Model

Env-Ws 388 and Env-Ws 389 both require the development, refinement, and presentation of a conceptual hydrogeologic model. The following comments are provided in this context:

- 1) *180-day Recharge Period*: Executive Summary, page i (paragraph 1) states: *"in particular, this rate can be sustained even if there were no contribution to groundwater from precipitation at all for six months, an event which almost never occurs in New Hampshire"*. This and other similar phrases in the report need to be revised to reflect typical natural conditions. In New Hampshire, water levels in all types of aquifers typically decline every year from the month of May through the month of October, because very little precipitation replenishes aquifers during this period (see data collected by the United States Geological Survey at <http://nh.water.usgs.gov/Publications/annual01/A8.gwlevels.pdf>). The rate of decline varies, being greater during periods of drought and less during wet weather periods. As discussed below, in addition to changing the report language, the conceptual model needs to be fully calibrated to this 180-day no recharge period as required in Env-Ws 388.
- 2) *Aquifer Storage/Source of Pumped Water*: Executive Summary, page ii (paragraph 3), page 27 (paragraph 2) states: *"Furthermore, although water available within storage will not be tapped due to the net water surplus...."*. Data from the report indicates that pumped water will be derived from both "recharge" and "storage" under virtually all conditions. During some time periods, such as the wet weather period when the withdrawal test occurred, the dominant source may be recharge with less pumped from storage than during "normal" conditions. However, the report data indicate that the withdrawal test created a zone of influence (Figures 3-16, 3-17, and 3-18) and thus storage was evidently being tapped to some degree even under the November 2002 withdrawal test conditions, which were relatively wet. The report language should be revised to better reflect this storage/recharge relationship.
- 3) *Potentially Conflicting Elements of the Conceptual Model*: The conceptual model describing the relationship between recharge in the shallow overburden and the bedrock aquifer needs to be more fully reconciled with the available data, and consistently developed and integrated. The report presents two conflicting conceptual models: (1) bedrock is vertically isolated from the surficial overburden and (2) bedrock is rapidly recharged by precipitation events so groundwater is not removed from local storage (i.e., bedrock wells are closely connected to the shallow overburden aquifer). Please correct the conflicting conceptual models or provide a technical basis to explain the apparent conflict. Statements that reflect the conflict within conceptual models are presented below:

Statements consistent with bedrock isolation from surficial overburden

- On page 28, (paragraph 3), the report states *"minimal response was noted in the shallow overburden deposits during the withdrawal test"*.
- On page 32- 33, the report suggests that bedrock is insulated or *"vertically isolated"* from events that occur on the surface that might cause contamination of the bedrock aquifer.

- On page 34 of the report, it is explained *“the water bearing fractures at the USA wells, especially USA-1 and 2 are at considerable depths below ground surface (ranging from 525-560 feet and 450-465 feet at USA-1 and USA-2 respectively); thus the water bearing fractures are naturally isolated (or vertically distant) from groundwater quality impacts identified in shallow overburden and the upper portion of the bedrock aquifer.”*

Statements consistent with bedrock being closely connected to overburden

- On page 26, the report states: *“In addition, antecedent groundwater elevation data collected for approximately 4 weeks at residential bedrock wells indicated a significant (average 2.9 feet) increase in groundwater heads. These data demonstrate that the bedrock aquifer: 1) receives significant recharge from precipitation; and 2) responds relatively quickly to recharge events.”*
 - The report states on page 30, paragraph 3 that *“groundwater elevations at the on-site overburden piezometer/wells responded significantly (up to 7.5 feet at OW-1) and quickly in response to precipitation events during the antecedent monitoring.”* OW-1 is screened in till, immediately above the bedrock aquifer.
 - The data presented on page 31 indicate that the observed increases in piezometric head in bedrock fractures were an order of magnitude greater than the amount of precipitation received, suggesting direct recharge to bedrock from precipitation.
 - Also on page 31, the report states that *“bedrock receives significant recharge from precipitation and the effect of recharge events are manifested within the bedrock aquifer (within days)”*, indicating that the bedrock aquifer is closely connected to the surface.
 - Monitoring wells NBW and OW-1 exhibited water level rises during the withdrawal test. This may suggest that precipitation directly recharges to bedrock.
 - On page 23 of the report it is explained that *“the dip of the primary fracture (NE-SW) was almost vertical (89° degree SE) consistent with one of the conclusions of the VLF survey.”* Vertical bedrock fractures could facilitate the direct connection of the deep bedrock aquifer with the shallow bedrock aquifer and possibly the overburden.
- 4) *Section 3.2.4, Page 11 – Step Drawdown Testing:* A sentence should be added to this section describing the results of the step-drawdown testing conducted by Geosphere in 2001. This step-test demonstrated that the pumping of each well individually (USA-1, 2, and 4) affected the water level of the other two wells that were not pumping, and this information should be incorporated into the conceptual model. If you do not believe this information should be incorporated into the conceptual model, please provide a technical basis for such a conclusion.
- 5) The report analysis states that deeper overburden wells show a greater response to pumping than shallower overburden wells (pages 28-29). However, there are other relationships that could develop this response. For instance, the precipitation effects on the deeper wells could be delayed relative to the shallow wells. Similarly, withdrawal test effects on the shallow overburden could be delayed relative to the deep wells. Please explain the relative impact hydraulic influences had on the water levels measured in the deep and shallow wells.

- 6) Preliminary water quality results obtained after installing the wells and during the groundwater discharge permitting process should be included in the conceptual hydrogeologic model discussion, per Env-Ws 388.06(c)(1).

2.0 Groundwater Withdrawal Test Assessment

- 1) The adverse impact analysis for water resources and wetlands in the report is dependent on drawdown data collected during the withdrawal test, extrapolated to 180 days. The graphs of water levels presented in Appendix H and all figures estimating 180-day zone of influence in the bedrock and overburden aquifers, depict the actual observed water level measured prior to, and during, the withdrawal test. Therefore the extrapolation of drawdown data after 180 days of pumping include the effects of recharge that need to be calibrated “out” of the model. The report indicates that 1.79 inches of precipitation fell in the three days immediately prior to the test. Although some of the precipitation fell as snow and was not immediately available as recharge, melting during the test probably allowed significant infiltration of water into the ground. An additional 0.55 inches of precipitation fell during the 10-day test. As specific examples, evidence of the impacts of the recharge caused by the precipitation events include:

- The drawdown graphs in Appendix H which show water level increases in a number of on-site wells between 5000 and 6000 minutes after pumping began; and
- Water levels in off-site wells that were not apparently impacted by pumping generally showed a rise in water levels before and during the pumping test.

Env-Ws 379.11(e)(3)b.3 requires water level measurements in a background well outside the zone of influence (Env-Ws 379 governs withdrawal tests by references contained in both Env-Ws 388 and 389). This was done, but not documented or used to correct for precipitation effects. An example of where precipitation may have masked pumping-induced drawdown may be the New Barn Well (NBW). The report (page 28) predicted no response at the NBW, even though Geosphere’s step tests indicated there was a response. The report’s results for the NBW show no response due to pumping, as depicted on the arithmetic-scale graph of transducer data (Appendix H), but the vertical scale is not suitable and may have hidden a response. The semi-log plots for both manual and transducer data show apparent responses to both precipitation and pumping shutdown in NBW. The following additional specific issues need to be addressed:

- Data corrections are necessary to adjust for influences other than pumping including the precipitation, pipe leakage, and constantly changing weather conditions that occurred prior to, and during, the withdrawal test to reflect the 180-day no recharge requirement of Env-Ws 388 or 389.
- Temperature data and weather conditions need to be provided in the report as required by Env-Ws 379.
- Precipitation measured on site should be provided to comply with Env-Ws 379.11(e) 5 and 8. Precipitation data were obtained from a weather station in Durham, New Hampshire, approximately 7.5 miles away, according to the report, page 13.

- If you believe that no data corrections are necessary, please provide a technical explanation for this conclusion.
- 2) The following tables in the report need to be revised to correct for precipitation and pipe leakage that occurred prior to and during withdrawal testing to meet the requirements of Env-Ws 379.15 as required by Env-Ws 388 and 389: Table 3-8, Table 4-1, Table 4-2 (section 2). If you do not believe any correction is necessary, please provide a technical basis for your conclusion.
 - 3) The following figures in the report need to be revised to correct for precipitation and pipe leakage that occurred prior to and during withdrawal testing to meet the requirements of Env-Ws 379.11(e)(8)/Env-Ws 379.15: Figure 3-13, Figure 3-14, Figure 3-15, Figure 3-16, Figure 3-17, Figure 3-18, and Figure 3-19. The report should provide a summary table of water levels at the end of the pumping period. End-of-test figures analogous to Figures 3-13, 3-14, 3-16 and 3-18 should also be provided. If you do not believe any correction is necessary, please provide a technical basis for your conclusion.
 - 4) Env-Ws 379.11(e)(8) requires that water level data be presented in tabular form. The table(s) must include appropriate corrections to the groundwater levels. In addition to data corrections for precipitation effects, because many of the wells monitored during the withdrawal test are constructed in semi-confined aquifers, correction for barometric efficiency is also appropriate. Further, depending upon the types of transducers used, barometric pressure variation effects on water level instrument reading may also be necessary if the pressure transducers were not vented. Both recorded and corrected water levels are to be plotted versus time, as spelled out in detail in Env-Ws 379.11(e)(8)c. If you do not believe any correction is necessary, please provide a technical basis for your conclusion.
 - 5) Env-Ws 379.11(e)(8) requires a table providing the horizontal distances between observation points and the pumping well(s). This has not been provided. The same regulation requires that drawdown be plotted versus the log of distance. This has not been included in the report and should be added for selected well profiles, especially west of the pumping wells. The plots should use measurements corrected for precipitation and other effects as described above. Both end-of-pumping test results and 180-day results should be considered.
 - 6) The zone of influence that has been delineated in Figure 3-13 and the wellhead protection area delineated in Figure 3-15 need to be revised. There does not appear to be a basis, or the basis is not clear, for the extent of the zone of influence provided in the report relative to all orientations of the site and the network of wells monitored during the withdrawal test. The network of wells did not extend in the northern, western, or southern direction of the site to a distance where no response to pumping was observed. As discussed above, analytical methods that establish a distance-drawdown relationship in preferential flow direction to the USA Springs pumping wells must be developed and applied to delineate the zone of influence. It is likely that the wellhead protection area presented in the report, that must be delineated in accordance with Env-Ws 389.15 (which references Env-Ws 379.17), will need to be expanded to the west. Note that outcrop #4 (Figure 3-1), located along Route 4 west of the site has approximately east-west fracturing.
 - 7) Please provide comment and justification for the construction and method of monitoring flow in the Unnamed Creek located north of the site. DES is concerned that the construction and monitoring methodology may have produced erroneous stream discharge estimates during the high flow

conditions that existed during the withdrawal test. Specifically, please comment on the following observations:

- The staff gage (yard stick) used to measure stage behind the weir was located in the nape (the sloping area of the water surface, where it converges to flow through the V), adjacent to the notch.
- The downstream sides of the notch were submerged, apparently preventing a free-flow condition.
- Numerous obstructions were present immediately upstream of the weirs including branches, tree roots, and, probably most importantly, the sand bags used in the construction.
- The weirs were leaking.

- 8) Please provide information that documents the accuracy of the meters used to measure the discharge volume from USA-1, USA-2, and USA-4. Env-Ws 379.11(e)(2)c stipulates that *“the discharge rate from the test well shall be measured using a circular orifice weir or other device which provides measurements of equal precision.”* The withdrawal test used flow meters instead of orifice weirs, and the calibration certification for the meters had expired (Appendix H.9). When flow meters are used, it is common practice to allow for a secondary method to measure discharge rates at some point in the discharge line and/or to use orifice weirs to verify the accuracy of the flow meters. Appendix H.9 contains a letter describing the accuracy of the water meter used in the mobile treatment unit (a potential secondary measurement opportunity), but the report does not contain any flow recordings for this meter. Assuming that quantity of water pumped is tied to the degree of impact on domestic wells, wetlands, and contamination migration, greater confidence in the precision of the discharge measurements would be beneficial. For example, if a large groundwater withdrawal permit is issued, and it contains a series of pumping rate reductions stipulated as part of a response plan to adverse impacts, the reductions could be selected with more confidence if there were greater confidence in the accuracy of the flow measurements made during the test.
- 9) Env-Ws 379.11(e)(2)e requires that the *“test well shall be pumped at a single, constant rate”*, but does not specify a tolerance limit. After installing the new meter on USA-1 on 11/22/02, no interruptions were recorded, and all three wells had constant “target rates” for the rest of the test. However, significant (>10%) fluctuations relative to the target rates are noted in Appendix H.1. Presentation of average pumping rates (and deviations) for each well for the last 7 days of the test would be instructive, as would a discussion of the effects (or lack) of the discharge deviations on the key interpretations for the analysis.
- 10) Report Page 13, Section 3.2.6: Please provide the results of the on-site precipitation measurements, daily log of site activities, and log of weather conditions as required by Env-Ws 379.11(e)(5) and (8).
- 11) In accordance with Env-Ws 389.11(f), describe all procedures for collecting water quality samples from the monitoring wells. This information should include at a minimum, a description of equipment and methods used to purge and collect water samples, volume of water purged from each monitoring well, water level measurements, and the data describing the water quality parameters and water level measurements that were obtained during the sampling and the purging of water from each monitoring well. Chain-of-custody forms must also accompany all laboratory reports.
- 12) Appendix G of the report contains the analytical results of soil sampling. Provide the rationale for this sampling, and please describe the methods that were utilized to collect the soil samples.

- 13) In the water level graphs presented in Appendix H, some manual water level measurements are inconsistent with the measurements collected by the pressure transducer (see graphs for PS-2S, PS-4S, PS-8S for examples). All measurement discrepancies must be explained so it can be determined what measurements should be considered accurate. Also, all corrections or adjustments applied to measurements must be identified and described.

3.0 Wetland Impact Assessment

- 1) Page iv (paragraph 6) states "*Minimal drawdown being observed in the shallow overburden deposits (on the order of 2 feet)...*". Two feet of drawdown in the shallow overburden may be significant. The lowering of shallow water by two feet may dewater submerged wetlands or lower the water table below the root zone of wetland vegetation, thus adversely impacting natural resources and causing adverse impacts to occur as described by Env-Ws 388.18(c)(6) and (7);
- 2) Typically during a withdrawal test, if a groundwater withdrawal is deriving water from wetlands, drawdowns on the order of 0.1 feet are observed in wetland monitoring points. The water level data presented in the report plot water levels on a graph with water level elevation or drawdown shown on the y-axis. However, the y-axis has a range that exceeds the actual fluctuation of water levels by one or two orders of magnitude, making it very difficult and in some cases impossible to determine if a shallow well responded to the pumping of the wells at USA Springs. Please provide this information on a smaller scale that facilitates observations of fluctuations that may be significant.
- 3) Leakage in the discharge pipe occurred during the withdrawal test. Therefore water levels obtained from P-3S, P-3D, PS-3S, PS-3D, P-2S, P-2D and P-2S may have been affected. The occurrence of the leakage should be described qualitatively and quantitatively. Corrections to measurements must be applied in accordance with by Env-Ws 379.11(e)(7) and (8). If you do not believe any correction is necessary, please provide a technical basis for your conclusion.
- 4) As discussed in Section 1 and 2 above, rain, snow and temperature fluctuations may have an effect on water levels during the withdrawal test. Measurements obtained from monitoring points located in the shallow overburden and surface water bodies also appear to be impacted by weather trends (see water level elevations measured during the antecedent and pumping periods for OW-1, DP-1S, PS-2S, PS-3S, PS-4S, PS-8S, PS-9S, P-1S, P-1D, P-2S, P-2D, P-3S, P-4S, P-4D, P-5S, P-5D, P-6S, P-6D, P-8S, P-8D, P-9S, and P-9D). Therefore, the report should contain a monitoring, reporting, and mitigation program prepared in accordance with Env-Ws 388.20 and 388.21 to compensate for insufficient and incomplete data that exists to complete an adverse impact assessment in accordance with Env-Ws 388.20(a)(1). The monitoring, reporting, and mitigation program presented in Section 4.2.3 of the report is very limited in scope, and only monitors the prime wetland immediately adjacent to the site. A monitoring, reporting, and mitigation plan must be developed and implemented that protects the functions and values for all wetlands within a zone of influence that is delineated in accordance with Env-Ws 388.09(a), Env-Ws 388.06(h) or Env-Ws 379.11(e)(8) in order to ensure that adverse impacts as defined by Env-Ws 388.18(c)(7) do not occur.
- 5) Please provide a measurement of representative resources and uses such that the data can be used to estimate the effects on all resources and users that might be adversely impacted as required by Env-Ws 388.09(d). There is no analysis or figure that reconciles the withdrawal monitoring network with the water resource and use inventory prepared in accordance with Env-Ws 388.15.

- 6) The report includes the statement that “*potential loss in groundwater discharge to the on-site Beaver Pond (BPW40) is insignificant compared to the storage in the Pond and the flow rate observed in the Unnamed Creek during the test*” (page 38). The report’s wetland leakage analysis estimates the amount of upward flow from shallow overburden to the wetland under non-pumping conditions, and it also estimates the amount of downward flow from the wetlands to shallow overburden after 180 days of pumping with no recharge. The report’s analysis then combines these two results to obtain the “total difference in leakage” (Table 4-2) of 0.16 cu. ft./min.

The report presents limited data characterizing the geologic deposits beneath BPW40. The drilling and boring logs in Appendix E contain geologic information for one point (DP-1) in BPW 40. This log indicates only that 4 feet of muck (loose, wet, brown, suspended fine organic material with sticks) is underlain by 3.5 feet of “wetland deposits” that were not sampled or described. With this limited information, the magnitude of leakage that would occur in response to head differences between the wetlands and the shallow overburden cannot be accurately predicted. Please comment on the following issues:

- a) Explain how unknown variations in the thickness of sediments underlying the wetland were accounted for in your analysis;
- b) Explain how the heterogeneity and occurrence of preferential pathways in the sediments underlying the wetlands were accounted for in your analysis;
- c) Explain further how the method for estimating the hydraulic conductivity of the sediments underlying the beaver pond was correlated with the physical properties of the actual sediments. The vertical hydraulic conductivity value used in the calculations is taken from a single triaxial permeability test on a sample collected from OW-1D, located outside of wetlands and more than 1000 feet away from BPW40. The report acknowledges (page 39) the discrepancy, but states that the vertical permeability result “*is conservative because the fine-grained, organic-rich wetland/pond deposits are expected to have a lower vertical conductivity*”;
- d) Explain why the water levels used to estimate vertical gradient were not corrected to adjust for recharge from precipitation that occurred immediately prior to and during the withdrawal test;
- e) Explain whether the results of water level monitoring at DP-1S may suggest that the beaver pond acts as a boundary condition, given that the water level in the shallow subsurface equilibrates with the water level of the beaver pond during withdrawal testing;
- f) Explain why the leakage analysis was limited to only 50,000 ft² of the pond bottom given that:
 - i) The zone of influence of analysis did not correct for precipitation that occurred prior to or during the withdrawal test; and
 - ii) The water level monitoring network consisted of driven monitoring points in and around the wetland. Therefore, the soils underlying the adjacent prime wetlands (BPW40) were not directly characterized so the vertical placement of the piezometer screens does not have a well-supported technical basis; and

- g) Explain why the wetlands leakage analysis (pages 38–40 and Table 4-2) was not corrected to dry weather conditions from the relatively high flows and surface water levels that existed during the withdrawal test.
- 7) The report provides a description of the soils underlying the on-site beaver pond on page 22. However, with the exception of the boring log associated with the installation of monitoring point DP-1S which did not directly assess the properties of the soils underlying the wetland, no detailed information is provided regarding the subsurface investigation conducted by the certified wetland scientist. This information is required to determine the basis for the conclusion that *“the pond bottom reduces the degree of hydraulic communication between the Beaver Pond and underlying aquifer.”*
- 8) The report’s conclusion that the leakage rate will be reduced by 0.16 cu. ft./min on page 38 may be simplistic. Based on the calculations provided, there is not just a reduction in upward leakage but an elimination of the upward vertical gradient that might drive groundwater discharge to the wetland under non-pumping conditions. If this is the case, pumping the USA Springs wells may cause groundwater discharge to the wetlands to cease even under the relatively high water conditions prevalent during the pumping test.
- 9) The analyses on page 38 of the report explains *“the loss in the wetland leakage rate (0.16 ft³/min) is only 0.15% to approximately 1% of the stream flow observed in the Unnamed Creek during the withdrawal test (13.7 to 109.6 ft³/min)”*. On page 39 of the report, it is explained that leakage rate analysis suggests that only 3% of the pond volume will be reduced due to pumping if it did not rain for 2 months. This analysis does not take into account the recharge issues raised above. For the reasons described above, please correct for precipitation recharge in your analysis. If you do not believe any correction is necessary, please provide a technical basis for your conclusion.

On page 40 of the report, it is concluded that *“both the large flow volume in the Unnamed Creek and the large storage of the pond are expected to minimize any potential effect of the proposed withdrawal on the wetland system and pond.”* The conclusion that pond storage will help minimize pumping effects implies that USA Springs believes that infiltration of water from the pond may occur during pumping. The report does not discuss the effect that pumping the wells during a time of reduced (or even zero) flows in the Unnamed Creek would have on the amount of water in the pond. If stream flow were reduced or eliminated, and if groundwater discharge to the wetland ceased, the pond would lose storage due to evaporation, surface water outflow, and possible infiltration into the ground under pumping stress. These potential wetland effects are not assessed in the report. The water budget also does not incorporate the loss of water to evapotranspiration, as well as the issues described in Comments 6-8, above.

- 10) The following statement is made on page 39 of the report: *“The use of the water level measured during the test within the Pond prior to the test to calculate leakage under 180-day no-recharge conditions is conservative since during such conditions the Pond level is likely to be somewhat lower, hence resulting in a smaller gradient and a smaller leakage rate”*. This analysis does not appear to take into account several factors. Whether the pond is contributing water to, or receiving water from, groundwater is dependant on seasonal conditions. During periods of low recharge and the vegetative growing season, it is likely that the water level of the underlying deposits will also be lower, meaning that the vertical gradient could actually be larger and reversed in the downward direction under low-flow conditions. The water level used to calculate the vertical gradient between the pond and the overburden aquifer does not account for this, because it has not been corrected for the effects of

precipitation. Also, as presented, with the same head in groundwater in the shallow overburden, lower surface water level would result in a greater, not a smaller, vertical upward gradient. In this case, possibly more drawdown of shallow groundwater would occur before groundwater and surface water in the wetlands reached equilibrium.

- 11) Selected surface water information is illustrated in the "Surface Water Elevations" graph in Appendix H. This graph shows that prior to the pumping test, groundwater levels in shallow overburden (DP-1 interior) are greater than surface water levels in BPW40 (DP-1 outside and SG-1). This illustrates the upward head gradient that existed prior to pumping. After one day of pumping (11/20/02), groundwater and surface water levels were nearly coincident throughout the remainder of the test. Thus, the upward gradient was eliminated, and an equilibrium condition was apparently established. One possible interpretation of these data is that under pumping conditions, water is drawn toward the pumping wells from the shallow overburden in the vicinity of BPW40; once the upward gradient is eliminated, induced infiltration from the wetland may occur. The wetland may be acting as a hydrogeologic recharge boundary during pumping conditions. The report should assess this possibility and the consequences for the wetland during dry conditions. If you disagree, please explain your analysis.
- 12) The information presented in page 40 of the report supports USA Springs' observation that there was no response noted in overburden deposits near Nottingham Critical Wetlands (CI)/Barrington Prime Wetlands #39 and Barrington Prime Wetlands #10. This conclusion is logically extended to "*far-field wetlands located within the Study Area.*" As discussed above, please either provide an analysis that corrects for precipitation and in the context of a conceptual model that anticipates drought conditions as defined in the rules. If you do not believe data corrections are necessary, please provide a technical basis for this conclusion. Also, the report extends the observations for these two wetlands to make the conclusion that "*there will be no adverse impacts to any far-field wetlands located within the Study Area.*" Similarly, the potential impacts to these wetlands need to be discussed for dry conditions for those wetlands that may overlie certain bedrock fracture zones (and thus experience preferential drawdowns). Also, PS-2S, located near a small wetland near pumping well USA-2, showed a slight response (rise in water level) at the time of pumping shutdown that needs to be discussed and considered (see graph in Appendix H).
- 13) Appendix D – This section of the report needs to be updated to include the following:
 - a) Table 1 which is referenced on page 1, paragraph 2, but is not included in the appendix;
 - b) A revision of this section to reflect the zone of influence that was delineated in accordance with the requirements of Env-Ws 388.09(a), Env-Ws 388.06 and Env-Ws 379.11(e)(8);
 - c) A figure showing the location of onsite wetlands that are described in Attachment C; and
 - d) A summary of how the requirements of Env-Ws 388.09(d) were complied with.

4.0 Effects on Current Water Users

- 1) All analyses presented in the report must be revised as described in Section 1 of this document. All graphs depicting water level measurements should be constructed on an appropriate (i.e., small) scale so that subtle trends can be reasonably identified.
- 2) The dewatering of the water column by a factor of only 10% (page 35) may result in the dewatering of a primary water bearing fracture that supplies water to the well, and, as a result, an alternative water supply may have to be provided to these water users.
- 3) Simply lowering a pump intake of a well as described on page 35 to mitigate an impact may not be adequate. Loss in head within the water column of the well casing may cause a well pump to fail, and a new more powerful pump may need to be installed to off-set head losses caused by the pumping at USA Springs.
- 4) The report states "*there is no current evidence that suggests that adverse impacts will occur, similar minor mitigation steps (i.e. – lowering the pump) might be required at very few other private wells*" (page 35). Please identify which area and wells USA Springs is referring to. Because impacts were observed at the edge of the monitoring network in the easterly direction, how will impacts be identified and addressed in accordance with Env-Ws 388.09(a) and (d) or Env-Ws 388.20 (a) and (b)?
- 5) Projected 180-day drawdown results (Table 4-1) show that four of the domestic wells monitored would experience a drawdown greater than or equal to 10% of the available water column under high recharge conditions. All of these wells (Brett and Stephanie Gillespie, Irene Gillespie, James Page, Jr. and John Pierce) are located along Rt. 4 (Old Turnpike Road), west of the USA Springs site (Figure 3-13). The Brett and Stephanie Gillespie well has a projected drawdown of 61 feet, and the Page well shows a projected drawdown of 39 feet and is more than 3000 feet away from the nearest USA Springs pumping well. Additional wells in this vicinity have projected drawdowns that are greater than 5% of the water column. Other wells in the area were not monitored during the test, and some of these may also experience significant drawdowns during USA Springs' pumping.

Of the four wells with greater than 10% projected drawdown, none has a Well Completion Report in Appendix C, and Appendix C contains a questionnaire only for the Pierce well. This questionnaire indicates that a new pump motor was installed in March 2002, but does not provide pump depth or other information. The report asserts (page 35) that "*anticipated depth of pump intakes (is) expected to be ... at sixty to seventy-five percent of the well depth*", but provides no evidence. The report predicts "*no loss of available water to the users of these wells.*" Based on the data presented, this assertion has not been justified.

5.0 Water Quality

- 1) Report Page 12, Section 3.2.5: Significant findings regarding the results of the Pre-Withdrawal Test Water Quality Monitoring should be described. For example, Radium 226+228 exceeded drinking water standards set forth by Env-Ws 315.60 in the sampling conducted in October 2002, but is well below these standards in samples collected in November 2002. These results should be assessed to determine if groundwater derived from USA-1, USA-2 and USA-4 will require treatment to continuously meet safe drinking water standards to meet the objectives of Env-Ws 389.11(b).

- 2) The majority of the results of water quality sampling conducted in September 2000 and October 2002 indicate that groundwater obtained from USA Springs' wells exhibit elevated concentrations of iron and manganese, and often above the secondary water quality standards set forth by Env-Ws 319. The results of the water quality sampling conducted in November 2002 continue to show elevated concentrations of manganese, but this sampling event indicated that there are low concentrations of iron in the groundwater derived from USA Springs' wells. Based upon the conflicting sampling results, it is unclear if groundwater derived from USA Springs' wells may exceed secondary water quality standards. Please provide an analysis that: 1) Describes reason for the changes in water quality derived from the production wells; and 2) Assesses if water derived from the wells may require treatment for iron to continuously meet secondary drinking water standards.
- 3) Report Page 37, Paragraph 1: Please submit the calibration logs for the field equipment that were used to collect the field water quality measurements.
- 4) The last two lab reports in Appendix G (samples 75790 and 75791) both are labeled as collected from well OW-1, but show very different results. Please provide an explanation that explains this discrepancy.

6.0 Miscellaneous

- 1) Report Page 7, Paragraph 4: The Study Area delineated pursuant to Env-Ws 388.06 and 388.14 includes the Town of Northwood and a public water system in Barrington, in addition to the Town of Nottingham and Barrington which were included in the original study area delineation. It is DES's understanding that these entities have not been notified of the proposed withdrawal in accordance with Env-Ws 485-C. Because USA Springs has significantly revised the proposed study area included in the initial submission dated May 2001, Public Notification of the major permit application to municipalities and public water suppliers that were not previously notified, but located within the revised study area, must be completed in accordance with RSA 485-C:14. Specifically, the Town of Northwood and the public water system at the Barrington Home Estates have not received notification in accordance with RSA 485-C:14.
- 2) Report Page 11, Section 3.2.3: Figure 3-8, not Figure 3-2, presents a weighted histogram of the bedrock fracture trends.
- 3) Demonstration of Need/Water Efficiency – Env-Ws 485-C requires that an applicant demonstrate a need for a proposed withdrawal. The report requests a permitted withdrawal volume that appears to exceed the volume of water that can be trucked off-site based upon local zoning. The report does not address local zoning restrictions on trucking, but rather points to the consumer demand for bottled water as a basis of need. State law (RSA 485-C:4, XII, b) relates the "Demonstration of Need" specifically to implementing water conservation techniques when developing a new large groundwater withdrawal. Please reconcile site trucking limitations with the requested withdrawal volume or otherwise describe how the requested withdrawal amount will be efficiently used.

7.0 Future Monitoring, Reporting and Mitigation Requirements

On page 41 of the report, it is explained that the objective of the proposed future monitoring and reporting program is to: *"1) Confirm the conclusions reached on the basis of the withdrawal test; 2) Ensure that the operation of the proposed withdrawal does not have any adverse impacts on current water users or wetlands; and 3) Collect data needed to make necessary operational changes."* An additional objective of the future monitoring and reporting program must be to address the condition described by Env-Ws 388.20(a)(1). This regulation describes the need to conduct ongoing monitoring upon operating a withdrawal when withdrawal testing data is not sufficient to verify that adverse impacts from a large withdrawal will not occur. Although the withdrawal test included a substantial number of monitoring points, much of the response observed from shallow overburden and surface water monitoring locations was dominated by very high precipitation and highly variable climatic conditions. These influences caused the water level in the shallow monitoring wells to rise at an order of magnitude higher than the typical range of drawdown that is caused by a ten day withdrawal test. This means that even when corrections for precipitation are applied, it is most likely that much of the wetland environmental monitoring data will be ambiguous. Furthermore, the residential monitoring well network did not extend far enough in the westerly direction and the report acknowledges on page 35 that *"similar minor mitigation steps might be required at very few other private wells located within the SWP that were not monitored during the withdrawal test."*

The future monitoring program needs to include provisions to address the data collection inadequacies of the withdrawal test. Accordingly, the scope and intensity of the proposed future monitoring program must be to ensure adverse impacts will not occur to water resources or users identified by Env-Ws 388.07(d) and (e) and 388.15 as required by Env-Ws 388.20. The future monitoring program must include the monitoring of representative sites in accordance with Env-Ws 388.20(b) to meet the objective of Env-Ws 388.20(a)(1). Please revise your proposed monitoring plan accordingly.

DES does not agree that there is any scenario where the monitoring of water levels for a period of one year as suggested on page 42, paragraph 1, would be adequate to meet the requirements of Env-Ws 388.23. Monitoring should continue as long as the withdrawal continues, with an option to reduce the monitoring if data warrant, not vice versa as proposed on page 42. For the first several years of operation, reporting to the DES should occur more frequently than proposed on page 42. Water level monitoring data is also needed to support all wetland plot monitoring. Detailed mitigation action plans should be offered regarding both domestic wells and BPW#40. Such plans should propose both triggering thresholds for domestic wells and wetland observations, and also specific responses in each case. Unless the further analysis (involving pump curves) described above indicates otherwise, an "immediate" mitigation program may be required, per Env-Ws 388.21. It may be necessary to undertake mitigation steps for the four wells that show 10% impact, as an immediate permit condition, before pumping begins.

COPY

June 19, 2003

Commissioner Michael Nolin
NH Department of Environmental Services
6 Hazen Drive
Concord, NH 03302-0095

Re: United Springs of America, Inc.
Large groundwater Permit Application

Dear Commissioner Nolin:

I am writing on behalf of Save Our Groundwater to bring to your attention our concern about the dramatic reduction of public access and information regarding the large groundwater permitting process.

New Hampshire has a long tradition going back to 1784 concerning the public's right to know. In Part I Article 8 of the New Hampshire Constitution our founding fathers state "government should be open" and that "the public's right of access to governmental proceedings and records shall not be unreasonably restricted."

More recently the State adopted RSA 91-A the "Right to Know Law" in the tradition of the NH Constitution. In the preamble of that law the following is found, "openness in the conduct of public business is essential to a democratic society"(emphasis added). In the Annotations to RSA 91-A is found the following, "This chapter was intended to increase public access to governmental proceedings in order to augment popular control of government and encourage administrative agency responsibility."¹

In addition, the Administrative Rules adopted by DES provide for "public access to the permitting process." However, in the last few months DES has been significantly deficient in its communications to concerned citizens, organizations and communities regarding this specific permitting application. For example, the April 11, 2003 letter from DES to Manu Sharma of Gradient Corporation was copied to F. Rotondo, USA Springs; G. Smith, Esquire; R. Head, NHDOJ; S. Pillsbury, DES; H. Stewart, DES and R. Monaco, DES. These six people were the only people designated by DES to receive the Preliminary Technical Comments of DES regarding the Final Permit Application of February 4, 2003. Compare this to the September 11, 2002 Preliminary Hydrologic Report to Mr. Sharma with 14 copies being distributed including copies to the Towns of Nottingham and Barrington. This is a reversal of the past practice of DES for a period of almost two years.

¹ Society for Protection of NH Forests v. Water Supply and Pollution Control Commission 115 NH 192 (1975)

We are concerned about this trend away from transparency of communication with the taxpayers of our State. During the period from July of 2001 to February 13, 2003 DES issued at least 57 email updates to all interested parties. On March 20, 2003 Anthony Giunta issued an email regarding DES granting the Applicant an extension until August of this year. This is the last email update until June 16 when we were informed that the public hearing requested by several interested parties was denied. This change in DES practice is of great concern to SOG.

We ask that DES return to a policy of transparency regarding this important Withdrawal Application.

Specifically, we are requesting that you designate a key staff member from DES to provide technical and procedural data to our organization and any other interested citizens of the area in keeping with the spirit of our Constitution and our Statutes. We do not mean a public relations person, but someone who is familiar with the technical details as well as the procedural rules and regulations. We would ask that the designation be made in the next ten days. This individual should be available to answer questions of citizens prior to the end of the public comment period July 15, 2003 and beyond.

We would also like you to attend a meeting of Save Our Groundwater in July or August to review the status of the permitting process and to hear our concerns. We would be happy to work around your schedule to achieve this. Please notify us within ten days so that we can schedule this meeting. If that were not possible we would request that a small delegation of our organization meet with you at your office.

I must conclude on a negative note, sadly. I received yesterday (6/18/03) an email from Anthony P. Giunta, Administrator Water Supply Engineering Bureau announcing that "DES does not intend to conduct a public meeting or hearing regarding the February 3, 2003 report". It was our understanding that such a meeting or hearing would be scheduled by DES. Again DES is denying transparency in this permitting process to the citizens of this state.

It appears from this latest email that the decision will only be re-evaluated based on actions of USA Springs, Inc. If USA Springs, Inc. takes no action there will not be a public meeting or hearing! So they benefit by their inaction, while the public is ignored in its demand for a return to a policy of transparency. Or, are we to conclude that if USA Springs, Inc. fails to do the three items outlined in the email their permit will be denied on August 16, 2003?

We hope that your selection as Commissioner will lead to a return to "public accountability" and that we return to the good working relationship we have previously experienced between DES and our organization. We look forward to hearing from you.

Sincerely,

SAVE OUR GROUNDWATER

**William McCann, Chair
Legislative & Governmental Affairs Committee**



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



PLEASE NOTE: Effective September 1, 2003, the street address is 29 Hazen Drive.

December 15, 2003

Representative John M. Gibson
Legislative Office Building
33 North State Street
Concord, NH 03301-6328

Re: Right-to-Know Request, USA Springs

Dear Representative Gibson:

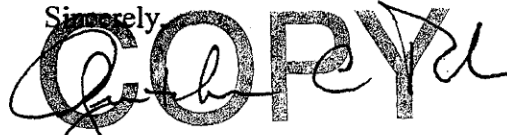
This is to acknowledge receipt of your letter dated December 9, 2003 to Commissioner Nolin, in which you requested the Department of Environmental Services ("DES") to make a copy of its file on USA Springs available to you. You specifically requested "all correspondences [sic] between the NH Department of Environmental Services, NH Department of Justice and the Office of the Governor from January of 1999 to present day."

Please be advised that the DES file on this matter is voluminous, but there are separate binders that contain all public correspondence relating to the case. Please call Brandon Kernan at 271-0660 to schedule a time to review the file (or just the binders, at your discretion) at DES's offices at 29 Hazen Drive in Concord.

Because the NH Department of Justice ("DOJ") is serving as DES's legal counsel in this matter, all correspondence between DES and DOJ is non-public.

If you have any questions about this response, please contact Richard Head at 271-1248.

Sincerely,


Gretchen C. Rule, Administrator
Legal Unit

cc:

Governor Craig Benson
Attorney General Peter Heed
Richard Head, Asst. Atty. General
Commissioner Michael Nolin
Asst. Commissioner Michael Walls

1
2
3
Honor
Serge

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

PETER W. HEED
ATTORNEY GENERAL



KELLY A. AYOTTE
DEPUTY ATTORNEY GENERAL

DEC 16 2003
December 15, 2003
INV. 107
SEN.

Honorable John M. Gibson
State Representative
Legislative Office Building
33 North State Street
Concord, NH 03301-6328

DEC 17 2003

Re: RSA 91-A Request
USA Springs

Dear Representative Gibson:

I have been asked to respond to your RSA 91-A request dated December 9, 2003 to Attorney General Peter Heed. You have requested to see all correspondence between the Department of Justice and the New Hampshire Department of Environmental Services and the Office of the Governor that relate to USA Springs, Inc. You have also requested a copy of phone logs from the Attorney General's Office that relate to USA Springs.

I was unable to locate any correspondence with the Governor's office regarding this matter in the Department of Justice's files. Because this office has been acting as legal counsel for the Department of Environmental Services with regard to the USA Springs permit application and related appeals, correspondence with DES is not subject to public review under RSA 91-A.

Thank you for your interest in this matter. Please give me a call at (603) 271-1248 should you have any questions.

Very truly yours,

Richard W. Head
Assistant Attorney General
Direct Phone: (603) 271-1248
Direct Fax: (603) 223-6264

cc: Peter W. Heed, Attorney General
Kelly A. Ayotte, Deputy Attorney General
Jennifer Patterson, Sr. Assistant A.G.
Michael Walls, Assistant Commissioner, DES
Harry Stewart, Director, Water Division
Gretchen Rule, Administrator, DES Legal Unit

11/01/07
M19
For: Bill McCann
Exhibit #4

WATER ADVISORY COMMITTEE MEETING
MONDAY APRIL 5, 2004

Compilation of notes from several people present.

Those in attendance:

Sen. R. Green	Sen. J. Barnes	Sen. I. Estabrook
Rep. G. Musler	Rep. J. Wall	Selectman M. Bonser
Anthony Giunta (DES)	C. Copeland (SRPC)	P. Newhall
J. Hadley	S. Conklin	W. McCann
D. Hart	W. Kyle	

Because the following is a compilation of notes from several people, they may not follow the actual flow of the meeting.

Tony Giunta (TG) The first permit was denied with a lengthy denial. Next the polluted piece of property was bought by Just Cause and remediation began, that is my Dept. and usa Springs is Harry Stewart's. Now a reapplication has been submitted for the same quantity and remediation continues. Just about 30 days ago DES was notified by usa Springs that everything was in. That prompted the public hearing and 45 day comment period. Now we're reconvening the public hearing with a 45 day comment period.

Q. What type of permit, conditional?

TG: All large groundwater permits have conditions. They (usa Springs) have assured DES that water will meet Ambient Groundwater Quality Standards (AGQS), State and Federal.

Q. What about the K&B site.

TG: Since the denial, a lot has occurred on the Just Cause site investigation. Under 1st denial DES said you must contain contamination. They have installed 4 deep extraction wells to isolate groundwater so it cannot escape into usa Springs wells. Further, containment meets AGQS.

Steve Conklin (SC) You're only concerned about contamination?

TJ: Yes

SC: What about the 27 points listed in the August letter?

TJ: They can all be mitigated by conditional permit.

SC: Tom Ballestero has raised issues not answered. Why was a technical decision not reversed by technical people? Why Nolin?

TG: We issue conditional permits, like Golf Course of NE, we have throttled them back.

SC: What has happened since August as of December (letters)?

TG: If the permit had been issued you would have all your answers. Brandon Kernen (BK) has addressed all issues by conditions. Quantity is not an issue because of conditions. They have done a pump test on the Just Cause site. There will be a pump test with both sites running before a permit is issued. No work scope approval is necessary on everything they do. However, a work scope approval will be necessary for a two site pump test.

Not "remediation". Applicant will clean up.

Ordinarily we need 2 years of data to prove containment - they suggested 1 year. We (DES) said remediation has occurred so quickly a year is OK. They said can you do better? We (DES) said one spring and summer. They said we don't want to contain, we want to clean up.

Q: Who will monitor?

TG: Waste Management Div. and their (usa Springs and Just Cause) professionals. We have staff to monitor.

Q: Environmental Impact Statement (EIS) for Lamprey?

TG: Check with Branden Kernen.

Q: Continue this coming public hearing if necessary?

TG" I sense the hearing will be closed. Public comment can continue. The discharge is into storm drains on the K&B site.

Q: Why are all the discharge pipes back on the usa Springs site?

X TG: Nothing is supposed to be going on at the usa Springs site.

Q: Where is their money coming from?

TG: I don't know. Investors?

Q: Is it unethical to have Rep. Tony Soltani as counsel?

TG: (no reply)

Q: What about buried pollution at the Just Cause site?

TG: No evidence. Borings are suprisingly devoid of contamination. Soils are all very clean. Our theory is that it was only surface contamination that got into the ground through openings around pipes etc.

Q: Is aquifer contaminated?

TG: Apparently not

Q: During 1st test weirs were placed in prime wetlands, which skewed results. Therefore, the final report should also be skewed. There are other areas of intentional wetlands impact. DES has been silent.

TG: If quantity issues have been mitigated apply to Planning Bd.

Q: Does information from DES independent counsel exist?

TG: Yes. Contact Brandon.

SC: Mark Beliveau has asked for information.

No answer.

Q: Does that contract exist?

TG: The third party contract at DES has ended. No third party overview. Not necessary.

Q: After process, DES issues permit w/conditions. Is there any public comment?

TG: No.

Q: After closure of comment, 45 days... at any point in time, would it have standing?

TG: After 45 days right, if it's important we'll consider it even if it means going to court.

Q: Permit with conditions would go back to planning board.....
..Melding of conditional permit?

Senator Green (SG)....Any additional information from applicant since original application?

TG: Some, like w/analysis of draw down, etc., not substantial.

SG: t normal for DES to accept substantially the same application?

TG: Yes, with additions.

SG: This would not normally be accepted at other agencies or boards.....

TG: We are here to help the applicant through the process.....

SG: Contamination issue was denied and now they're getting what they wanted on the same information?

TG: New information.

Q: How credible was the information.

TG: Decision would have been the same.

We have not waffled, we denied the extension and permit.

Q: What about now?

TG: There is new information, stuff done after the fact.

Q: Governor's influence?

TG: [No response]

TG: Information has come in at the last minute. If they walk out....these contaminated sites linger for 10 - 20 years. People ask when are you (DES) going to clean it up? This company is going to clean up, at the cost of 1 mil to 1½ mil dollars. It's a win win situation.

TG: [In response to people from Governor's office being involved] Keith Herman & the Governor's Business Development Liaison.

Q: Are you going to include that the applicant still has to comply with the town level - water quality and premature development...."Make sure you comply with 485:C-20". Also historical inventory.

TG: Make that a public comment.

Q: Go back and look at 27 reasons - they cannot be solved during production phase, wetlands, meet data requirements...the issues are related to quantity. By their own documents they will be using 48% of available water and will reduce water to business by 98%. Why is this acceptable?

TG: The 27 quantity issues are no longer an issue because it was denied. Brandon has the answers and they will stand up in court.

Q: I'd like to talk on process and e-mail updates that stopped regarding waste management side, where the science is related between the two?

TG: When requests came in to me, the waste remediation side, I reasoned we never did it before - were not doing it now, because of lawsuit potential (treating someone different). Since 1986 it was never done and there are too many cases.

Q: usa and Just Cause are linked. And as of today it would be easier, e-mail was not available in 1986.

TG: No. Our budget has been slashed. Not feasible to notify all of NH by e-mail.

Q: Pump test, usa Springs?

Q: You know they (usa) are getting ready to pump.

TG: usa Springs should not be pumping, they have no work scope. DES will be out there Thursday - "No more data" needed.

TG: Contamination did migrate over to usa Springs.

Q: Foster's article, this is final application according to Jim Martin, new to DES.

TG: There is never a final application. There is a hiring freeze, although federal funds are loosening. That's how we hired Jim and one other.

Q Rules for upcoming public hearing?

TG: We will take public comment from those who didn't speak at the prior hearing first and then others. Mike Walls will be there

TG: Never saw any other project move through DES as fast as this project has been going.

Kyle: People are seriously bothered by repeated statements from DES referring to the applicant as having made a "good faith effort". Everyone has either read or heard about 4 weirs being installed on private property in Prime Wetlands in such a way that they skewed the test results. These weirs are reportedly still in place in the wetlands.

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Towns guard water supplies

By Jesse J. DeConto
jdeconto@seacoastonline.com

BRENTWOOD - Bottled water guru Joseph Cimino believes water wars in Nottingham, and Poland Spring, Maine, have clouded his industry.

Others feel the bottling business is tainted as soon as it puts its mitts on public water supplies.

Cimino, president of the Northeast Bottled Water Association, led members of the group on a tour of his spring water bottling plant in Brentwood this month.

Northern Springs Inc., which opened on Pine Road in 1999, is Cimino's second venture in the spring water business.

From 1988 to 1994, Cimino developed Garden Springs in Poland Springs, Maine, before selling the bottling plant to Nestle, the parent company of Poland Spring Water.

Last month, Poland Spring settled a class-action lawsuit alleging its water was not spring water but well water. The lawsuit was filed in July and settled in August. Even though the settlement admits no false advertising and similar suits are still pending against the company, Cimino wishes Poland Spring would have fought longer than just a few weeks to preserve its image and that of the spring water industry.

"It gives the appearance that something's wrong, even though I know there's not," he said. "We had beautiful natural springs, and they were certified as natural springs by the state of Maine."

Cimino said the regulatory issue is not whether the water comes from a well or from a spring, but whether the well water has the same chemical composition as the spring water and whether a well draws from the same underground reservoir that feeds a spring.

"Your water has a fingerprint. It has a DNA," Cimino said. "Water is not just water."

"People like to hear the aesthetics of spring water," said hydrogeologist Gene Schrager of Portsmouth-based GS Environmental & Groundwater Associates Inc., a consultant for Northern Springs. "Well water can be just as good, but people like to hear 'spring water'."

Part spring, part well

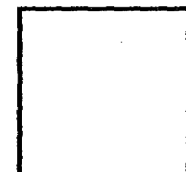
Northern Springs, which sells mostly under store-brand labels at Northeastern

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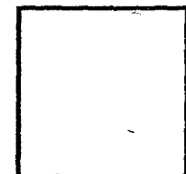
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spring water and part well water sourced from the same aquifer and from the ground, unless a customer asks for only naturally collected spring water.

Natural spring water bubbles through a layer of sand into four concrete storage tanks on Northern Springs' 92-acre site in Brentwood. Nearby, the topsoil is moist, as water slowly makes its way toward nearby wetlands.

"There's a lot more spring potential here if you wanted to develop more," Schrager said.

The spring water flows from the catch basins through plastic pipes into a 3,000-gallon steel storage tank near the lowest part of the parcel near the Exeter town line. From that tank and from a manmade borehole that collects nearly three times as much, the water is pumped into a 30,000-square-foot bottling plant, where it's filtered and treated to ensure drinking water quality.

Northern Springs' large groundwater withdrawal permit from the New Hampshire Department of Environmental Services allows the company to take 63,000 gallons per day from the dug well and 89,280 gallons a day total. Cimino is in the process of applying for an additional small withdrawal permit that would allow another 57,600 gallons per day. In 1998, the Legislature passed a law giving DES regulatory authority over groundwater withdrawals.

"This was the first permitted bottled water facility under the new regulations," Schrager said. "This is what the guy in Nottingham was trying to do."

USA Springs' plan 'overwhelmed'

Francesco Rotondo met with fierce opposition when he tried to install a USA Springs water bottling operation on 100 acres in Nottingham and Barrington.

On Aug. 12, DES denied USA Springs a permit to withdraw up to 439,000 gallons a day from the site. DES has until Monday to rule on the company's motion for rehearing on that decision.

If Rotondo had asked the advice of Cimino, a veteran of the bottled water business, he would have told him to lower his gaze instead of coming into a small community with talk of shipping millions of gallons of local water to Europe. Even though he points out that bottled water makes up less than 1 percent of the water consumed in New Hampshire - far behind other users such as golf courses, beverage brewers and some manufacturing plants - Cimino said the USA Springs proposal would have scared even him.

"To set your sights and your goals as lofty as he did, it immediately caught everybody's attention," Cimino said. "It just overwhelmed people's thought that that amount of water was going to be leaving not only New Hampshire, but the United States."

Cimino said USA Springs should have applied for a small groundwater withdrawal permit and started the business in Nottingham slowly.

"Below 57,600 gallons a day, you are a small groundwater user, and you have a substantially smaller reporting requirement," Cimino said. "If he started there, he would have been under the radar. ... He could've always gone back to the well."

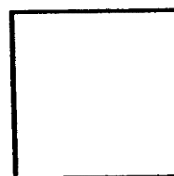
State backs up company

At 40,000 to 60,000 gallons per day, Cimino said his Brentwood plant is producing well below his permitted limits, but the operation has not been under the radar of the town of Brentwood.

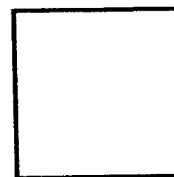
In May, selectmen sent a letter to DES complaining that Northern Springs was violating the conditions of its permit.

"The number and sizes of full tankers leaving the property on a daily basis is the primary indicator of the violation," selectmen wrote. "We believe it is incumbent upon the permitting authority to vigorously oversee and enforce all

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the entire permitting process and leaves every community vulnerable to water shortages."

After an inspection of the facility in June, DES hydrologist Brandon Kemen refuted the town's claims. The Brentwood plant's withdrawal levels are well below their permit limits, according to the company's quarterly reports to DES.

"The town did not provide any detailed information to justify (its) concern," Kemen wrote in reply to the selectmen. "Based upon information provided by Northern Springs ... and the results of our site inspection, the facility apparently withdraws less water than its permitted production volume."

Doug Cowie, who chairs the Brentwood Board of Selectmen, said with this response from DES, the town's hands are tied.

"(Cimino)'s doing what the state permits. If I have a problem, it's with the state and the permitting process," Cowie said. "We're a town amongst many that doesn't have a high comfort level with this self-monitoring process. It's like the fox guarding the hen house."

Kemen said if the state had strong suspicions that a bottling plant were exceeding permit limits, the Department of Health and Human Services could review sales receipts.

'We feel that should be the town's water'

Selectman Cowie said the 1998 legislation took authority away from municipalities soon after Brentwood had developed much stricter rules for groundwater collection.

If the town had its way, "the amount of water taken out would be more tightly regulated," Cowie said. "Our preferred number, obviously, would be zero, because we feel that should be the town's water."

Northern Springs has faced such criticism before, and Cimino concedes that large groundwater withdrawals will always make people nervous in a region that depends heavily on private wells.

The company has another bottling plant in Wells, Maine, and just before it opened during a drought in the spring of 2002, neighbors began to complain of dry wells and cast the blame on Northern Springs.

"I got tagged for drying people's wells, and we hadn't opened the facility yet," Cimino said.

"The state of Maine came to my defense," he said. "There was a drought. Wells were going dry everywhere."

As for the town of Brentwood's concerns, Cimino said his facility has no impact on surrounding well users.

"The water is very confined on this site, and it's not a danger to anybody," he said.

Yet Cimino is extremely concerned about the water that flows into the ground and onto his land from abutting properties. He said Northern Springs would not exist without 500 acres of conservation land across the street to protect the aquifer, and Northern Springs recently won a lawsuit to keep a neighbor from building on an adjacent lot after the Brentwood Zoning Board of Adjustment had approved a variance for the proposal.

Last year, Cimino furnished selectmen with a list of concerns about activities on nearby properties, including storage of asphalt shingles, ground stone and other materials. Selectmen responded to Cimino's letter by saying the neighboring businesses are complying with state permits.

"That is the commercial/industrial part of town," explained Cowie, dismissing the idea that Cimino's watching over the Pine Road aquifer is a service to the town.

businesses should be pretty interested in what he does, because one day they may go to flush the toilet and there's no water."

Water's big business

With bottling plants in Poland Spring and Wells, Maine, and Cheshire, Conn., Northern Springs has immediate plans to expand its permitted water production in Brentwood to nearly 150,000 gallons per day, and company literature on file in the Brentwood Town Offices states, "Management estimates that the site has the capacity to produce up to 1 million gallons of spring water per day."

Despite the growth of the Brentwood plant, Northern Springs could not keep up with the demand for bottled water this past week, as Hurricane Isabel threatened to knock out power to public water systems.

And the demand will continue long after the wind calms. The average American consumes 23 gallons each year, making bottled water the second-most popular beverage in the United States, and Cimino predicts that number will surpass soda within five years.

"We just leapt ahead of beer, spirits and milk," he said.

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United States Department of the Interior

NATIONAL PARK SERVICE

Boston Support Office
15 State Street
Boston, Massachusetts 02109-3572

IN REPLY REFER TO:

May 21, 2004

Water Supply Engineering Bureau
Attn: Brandon Kernen
New Hampshire Department of Environmental Services
PO Box 95
Concord, New Hampshire 03301

Re: USA Springs Proposed Large Groundwater Withdrawal

Dear Mr. Kernen:

As you know, the Lamprey River has been Congressionally designated into the National Wild & Scenic Rivers System pursuant to Public Law 90-542, the National Wild & Scenic Rivers Act. The legislation designating the Lamprey as a component of this system also specifies that the National Park Service coordinate its management responsibilities with the Lamprey River Advisory Committee established under NH RSA 483 - the NH Rivers Management and Protection Act, and manage the river in accordance with the Lamprey River Management Plan dated June, 1995. This Plan serves as the Management Plan for both state and federal designations.

The Wild and Scenic Rivers Act, the NH Rivers Management and Protection Program, and the Lamprey River Management Plan (Plan) which relates to both statutes, all recognize the fundamental necessity to preserve and protect instream flows as a critical aspect of preserving the values for which the Lamprey was designated into the respective state and federal programs. The Plan specifically recognizes the critical nature of summer low flow periods, as do the Instream Flow Rules adopted for the Lamprey under the NH Rivers Management and Protection Program. Further, the imperative to protect adequate instream flows on designated rivers is one of the strongest and most significant features of the NH Rivers Management and Protection Act. As stated on the NH DES' website, "The Act gives the Department of Environmental Services the authority and responsibility to maintain flow to support instream public uses in rivers that have been designated by the Legislature for special protection under RSA 483."

It is specifically the impact of the proposed large groundwater withdrawal to the summer low flows of the Lamprey that concerns us the most.

Over the 70-year 'period of record' flows in the river have reached or fallen below the interim summer aquatic base flow recommended by the U.S. Fish & Wildlife Service of 0.5 csm (91.5 cfs) some 34% of the time. Extremely low flows reaching the 7Q10 standard, 4.9 cfs, have occurred 0.7% of the time, while in 2002 the mean flow for both August and September was below the 7Q10 level. Last summer the Lamprey flowed for substantial periods of time in the 1.5 cfs range according to direct measurements taken by the Town of Durham. The river is tapped as a water supply by the Towns of Durham and Newmarket, which have both recently invested in the infrastructure to ensure continued access, especially during drought periods of Summer and early Fall, exactly when instream flows are already most greatly stressed.

We are greatly concerned that an entirely consumptive withdrawal of 309,000 gpd, roughly .5 cfs, from the Lamprey watershed could have significant impacts to summer low flow conditions in the Little and Lamprey Rivers. The loss of .5 cfs of flow from the Lamprey under summer low flow conditions, particularly under drought conditions, would be extremely detrimental to state and federally protected river values, and would likely result in complete dewatering of the Little River. This scenario is based on the possibility that most, if not all, of the 309,000 gpd would otherwise be available as base flow to the

MAY 25 2004
BOSTON

Little River and its tributaries and the Lamprey River -- a possibility that data and expert testimony contained in the DES record on this proposal seem to support.

We are unconvinced that the data presented to date support a finding that surface waters in the Little River watershed will be unaffected by the withdrawal of 309,000 gpd. As the Department reflects in its August 12, 2003 Findings and Decision to Deny, the applicant has presented conflicting information as to the connectivity between surficial overburden and bedrock water resources (point 3). Drawdown on the order of 2 feet was observed in shallow overburden pumping. DES expressed concerns relative to wetlands on site from such drawdown (point 14). We question what the impact on feeder streams and other surface water bodies may be, particularly from prolonged pumping and during droughts. In his comments as an invited guest before the Lamprey River Advisory Committee last week, Dr. Thomas Ballesterio stated his emphatic interpretation of the scientific data that essentially all of the 309,000 cfs proposed withdrawal would otherwise be available to the Lamprey River as base flow through the Little River and tributaries.

The applicant assumes bedrock flow and recharge are sufficient for the scale of withdrawal proposed, assumptions which other experts have challenged (see, for example, statement by Thomas Ballesterio dated 5 February 2004). Given the applicant's predictive confidence relative to water quantities, we are baffled by their explanation in response to DES questioning as to why the wetlands leakage analysis was not corrected to dry weather conditions. Such an analysis," states the applicant, "would be based on a number of assumptions (e.g. groundwater elevations near wetlands during dry conditions, pond conditions during dry conditions, etc.) and hence would not be reliable."

Public comment from Peter Thompson dated October 24, 2003 suggests alternative ways of interpreting observed behavior in various wells located by USA Springs to determine drawdown effects, including a fracture zone configuration that would tap water that "currently provides a significant amount of groundwater recharge directly to Mendums Pond," resulting in reduced head feeding water to the Pond, especially in times of drought. Mendums Pond feeds the Little River and, through it, the Lamprey River.

USA Springs reports estimate nearly twice the groundwater flow as it proposes to withdraw. However, their own data appear to contradict this estimation of flow (see Ballesterio 2/5/04). Again, we are concerned that, if the applicant has miscalculated, this project will have significant and irreparably negative impacts on the Little River watershed and the Lamprey River. Water lost from the system cannot be restored. Already readily stressed during summer months, the Lamprey cannot afford to lose water.

It is unclear to us why the DES has reclassified "deficiencies" as "uncertainties." We are disturbed by the reclassification, particularly since it appears to mean that USA Springs can proceed with production and determine the nature of the uncertainties and their environmental implications as the process gears up. At that time, it will be very difficult to abandon their investment.

The National Park Service is very concerned about this proposed withdrawal and its potential to negatively impact flows in the Lamprey River and its tributaries. We are concerned that basic issues of science do not appear to have been adequately addressed. We are also concerned that DES' responsibilities to ensure protected flows for the Lamprey River have not been adequately addressed, even as DES prepares to embark on an ambitious instream flow pilot study for the Lamprey, and is well aware of the extreme low flow conditions that stress the river and basin. Finally, we are concerned that RSA 483's prohibition against interbasin transfers has not been addressed through the review process.

Staff from the National Park Service are available to discuss any of these issues further at your convenience, please contact Margaret Watkins of our Concord, NH office at (603) 226-3240.

Sincerely,

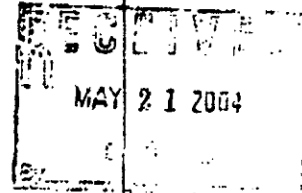

Anne Fosburgh
Rivers Program Manager



LAMPREY RIVER ADVISORY COMMITTEE
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Judith T. Spang, Chair
55 Wiswall Road, Durham, N.H. 03824
(603) 659-5936 fax (603) 659-6310 e-mail jtsfang@aol.com

Water Supply Engineering Bureau
Attn: Brandon Kernen
New Hampshire Department of Environmental Services
PO Box 95
Concord, New Hampshire 03301



Re: USA Springs Proposed Large Groundwater Withdrawal

Dear Mr. Kernen:

May 10, 2004

I am writing on behalf of the Lamprey River Advisory Committee, which coordinates the management of the Lamprey River with our local communities, the National Park Service under the federal Wild and Scenic River Act, and the State of New Hampshire under the State Rivers Management and Protection Program.

The Committee is submitting the following as our formal response to the request for public comments on the USA Springs proposal for a water bottling plant in Nottingham, N.H.

The LRAC has never received a response to the comments and questions outlined in our September 13, 2001 letter to DES. In that letter, we asked that certain information be acquired before a decision is made on this project.

Far from meeting these concerns, the data has either not been collected, or has deepened our concern that the hydrological tie between the Lamprey River and proposed withdrawal may threaten the river's resources that have led to its protection. Data presented, irrefuted by scientific analysis, indicates that area groundwater most likely feeds directly and perhaps exclusively into the Little River, a tributary to the Lamprey. At the withdrawal volume proposed, the Little River could be expected to be dry during low flow periods, depriving the Lamprey of up to 12% of its flow.

In dry periods, the Lamprey's flow consistently drops below 7Q10. During those periods, the river is relied upon almost exclusively by the Town of Durham and University of New Hampshire as a water source. The 401 permit given for construction of the withdrawal infrastructure places very tight controls on the conditions under which this

critical. In the Rules, the single most effective safeguard against any environmental degradation not foreseen by the impact studies is the ability of DES to withdraw or modify the permit if adverse impacts are discovered. It is our understanding that under international trade law, once the permit is issued, environmental degradation cannot be used as a reason for limiting the enterprise.

For this reason, it is extremely ill-advised to issue a permit based on inadequate testing and analysis with the intent of withdrawing or limiting the permit as problems arise.

5. We had requested of DES that we be kept advised of findings of the Impact Study, especially those regarding our written concerns. We have had no such feedback. We are now requesting to continue our status as a party of interest in this project and we would like to receive a written response to our concerns.

In conclusion, we urge DES to avoid the inevitable legal and regulatory conflicts created by unilaterally reclassifying the 27 deficiencies in the permit denial. We also urge the agency to consider scientific data being provided by outside specialists and to take a broader view of the water supply situation in the region before issuing a permit which may not be revocable.

Given that protection of instream flow is the heart of the State's Rivers Management and Protection Program, DES should consider approval of this large project as premature, at least until "no impact" on the Lamprey's ecological and municipal resources is conclusively proven. Given the data presented to date, or lack thereof, the LRAC feels that the proposed project has failed to meet that test.

Yours truly,

COPY
Judith Spang

Rep. Judith Spang, Chair

Denise Hart

291 France Road
Barrington, NH 03825
Telephone & Fax: 603 • 664 • 7469

F A X E D

May 24, 2004

Anthony P. Giunta, P.G., Director
Waste Management Division
Department of Environmental Services
29 Hazen Drive
Concord, NH 03302

Dear Tony,

I am writing to express my concerns about the most recent USA Springs, Inc. application to DES for a large groundwater withdrawal permit as part of the public comment period and to ask DES to uphold its August 12, 2003 decision by also denying this second application that uses substantially the same data that was previously found flawed by DES and a pump test that DES previously found deficient and that caused further contamination to the aquifer.

This company has already caused environmental harm to our communities, both through wetlands violations and the migration of contaminants into the aquifer as a result of their unapproved November 2002 pump test. They have flagrantly disregarded state law, refused to answer questions in public hearings, refused to disclose who their investors and partners may be that hide behind real estate investment trusts and proven themselves untrustworthy and unstable financially by not paying for the Town of Nottingham's groundwater consultant as part of the Planning Board process and by initially refusing to pay their bill with their own consultant Aries Engineering until an imminent sheriff's sale of their property forced a settlement.

A track record of environmental adverse impacts, illegal activities (prime wetlands, installation of a weir during the pump test), and financial instability bodes poorly for the health and well-being of our aquifer and the 10 communities who depend on the surrounding watershed potentially affected by this project.

I am concerned about Barrington's prime wetlands that are adjacent to this site and that the company has damaged. As you know, prime wetlands are a higher order protected category of wetlands in our state and I call upon DES to step up to the plate and do its job in protecting them for our community.

I am also concerned and ask DES to investigate the potential impact of daily groundwater pumping during the life of a 10-year permit on the hydrogeology of area for officially identified,

known by local knowledge and unidentified but potential contaminated wastes sites within a five-mile radius of the site.

I am concerned that the EPA Superfund site on Tibbetts Road in Barrington, about three miles as the crow flies from the company's proposed site, may become destabilized and cause more harm. The understanding that I have gained from public meetings and hearings about how a fractured bedrock aquifer functions leads me to believe that both the quantity and duration of the proposed USA Springs, Inc. project may lead to instability and further contamination from this contaminated area and pose a risk to Swain's Lake and its surrounding inhabitants and ecological systems.

I ask DES to require a long-range Environmental Impact Study to assess the recharge capacity of the aquifer involved; potential harm to wetlands, lakes, rivers (including the federally-protected Lamprey River and its watershed), streams and watersheds, wildlife and plant life; potential harm to homeowners and businesses in the communities potentially impacted; and potential migration of contaminants from the Just Cause Realty site, Tibbetts Road Superfund site and other known contaminated waste sites within a five-mile radius of the proposed project.

There is no need for this project other than the company's profit need. The communities involved stand united in their belief and knowledge that this project is not good for the health and well-being of the area's inhabitants and ecosystems.

I call upon DES to review this permit through the lens of your Environmental Equity Policy that states, "While the issues and concerns regarding environmental equity (also commonly referred to as [sic] environmental justice) vary from state to state and from community to community, the core issues is one of fairness in the siting, monitoring, and/or cleanup of facilities and the regulation of activities that represent environmental hazards." The immediate communities that about the proposed USA Springs, Inc. project are rural, moderate to low income communities that depend on their wells for drinking water.

A cluster of homeowners near the Tibbetts Road Superfund site have already had to bear the burden of losing their wells to contamination; these residents rely on Swain's Lake for their drinking water.

A mobile home park on Hall Road in Barrington, the former Ayvaz Mobile Home Estates, has recently become cooperatively owned and is planning an expansion to fund their mortgage. Both current and new residents of this park will rely on wells for their drinking water. There is also Emerald Acres down the road on Route 125 and Barrington Mobile Home Estates at the junction of Route 9 and 4—all relying on wells for drinking water.

The towns of Barrington and Nottingham are small towns that have had to bear a disproportionate share of legal expenses in order to protect their communities from a permitting process that seems to never end, even when the science proved and DES engineers and hydrogeologists concurred that it was not a good idea.

The clean-up of the contamination that expanded as a result of USA Springs, Inc.'s pump test is not complete and long-range pump tests have not been conducted. Any consideration of a conditional permit for this company puts our low and moderate-income communities under a disproportionate share of risk from activities that have already caused water pollution and damage to prime wetlands and have the potential to continue doing so.

I ask DES to review the company's latest application in the light of NH's groundwater protection law that holds that both surface and groundwater are integrated resources held in the public trust. You have an opportunity—just by upholding your previous findings in this case—to strengthen our state's water protection laws for present and future generations of all life.

I have spent almost three years learning about aquifers, the potential impacts of this proposed large groundwater withdrawal on my community, attended hearings, meetings and other activities to explore the issue. I was not a water activist before USA Springs, Inc. came to town, but they turned me into one. There are times in life when we have the potential to stop harm before it has the opportunity to take a deeper root and this is one of them. The Precautionary Principle states that when there is not enough data available to prove that an activity will not cause harm to the environment then it should not go forward until the proper studies and data have been accomplished. We do not have enough data. We do not have long-range Environmental Impact Studies. Harm has already been caused to the environment. A disproportionate burden has been placed on small, rural communities trying to maintain the health of their water supply.

Please step up to the plate again and do your job to protect us. I implore you to tell USA Springs, Inc. 'no'—unconditionally and finally based on the data already gathered, the adverse impacts already demonstrated, the state laws they already disregarded and the need not proven.

Thank you.

Sincerely yours,



Tony Giunta
Dept. of Environmental Services
29 Hazen Drive
Concord, NH 03301

5/20/04

Dear Sir:

We are again writing to express how important it is to protect the waters (surface and ground) of the State of New Hampshire as a "common" of the citizens of the State - for the use of all citizens. This can only be done by denying the application of USA Springs to pump water from a point that affects at least three watersheds in the greater Seacoast area.

There are many reasons that this is the best for the citizens of New Hampshire.

(1) Water is a fundamental need and right of every person and should not be "commodified."

(2) Then one must be aware that the "aquifer" from which the proposed water pumping is to take place is not really an aquifer; it is water stored in fractured bedrock and the technology is not available to be able to clearly determine the amount of water that is available. That is still an unsolved problem according to two hydrologists friends to whom we talked about this.

(3) USA Springs plans to export the water (to Rome, Italy) which would mean that trade treaties would apply (WTO, NAFTA, FTAA, etc.). So the state could be sued if they denied equal access to another company. Although this was for a time denied by a State Assistant Attorney General, it was later acknowledged by the Attorney General.

(4) USA Springs has violated local and state laws several times [including drilling wells without a permit], and -as far as we know- has yet to be made accountable for these violations. The State cannot reward the company for such actions by granting the permit. Besides breaking laws, the company caused pollution from a nearby polluted area (Super fund site, we think) to migrate to the wells in question causing local water, that was previously clean, to be polluted.

(5) This application is a matter of concern to more than the local towns; it is a concern for the whole Seacoast area at least and really of the whole State. We clearly recall a study of southwest NH water problems in the 1970s and early '80s by the Army Corp. of Engineers. The area papers told of the study which proposed a water pipeline from Alton Bay on Lake Winnepesaukee to the Seacoast region. The conclusion of the study was that this would be needed in the future but not at the time. Of course, the advent of global climate change will lead to possible long droughts which will cause water shortages. Several recent droughts have pressed some peoples' water systems severely: a few summers ago most people were worried about their water supplies, even those on town water systems because of low river levels.

The concern should be Statewide because of the trade agreements and the problems that could arise therefrom.

(6) Our personal water comes from a deep bedrock well in the Oyster River Watershed. Since no one knows just how water is distributed in bed rock, nor how much is available, and since the Oyster River source is near by the location of the proposed plant, our future water could be in

jeopardy. And since there are many other households in our situation, the risk is not worth any positive aspects of allowing the export of bottled water - including tax money which usually is less than the optimistic projections made to "sell" the project!.

(7) Our State government is established to act for its citizens and their interests. In a June 17, 1981 supplement on water in the The NH Times, there was an article entitled "WATER: the days of taking it for granted are gone." This is clearly a long range problem and our government agencies and officials should not be beholden to any corporation or individual which/who promises money from taxes or other benefits. It is clear to us, from talking to many citizens, that the majority of the people of New Hampshire want to protect their water and believe water is a "common." Any elected State official will hopefully be held responsible for irresponsible action in the peoples' name.

Thank you for your attention to this very important matter.

Sincerely yours,

Filson H. and Shirley R. Glanz
25 Orchard Drive
Durham, NH 03824
603 8968-5398
filglanz@comcast.net

PS: There were articles on water scarcity, conservation, and the Corp. Study on Mar. 2, 1974, Sept. 20, 1978, Sept. 24, 1980, June 17, 1981, and Aug. 5, 1981 in the NH Times as a minimum. Finding all such articles takes more time than we had available, because of the lack of good local newspaper reference material.

NOTE: Our Calculations show that USASprings would be pumping enough water to cover their 100 acres to a depth of 3 feet in a year. In contrast, our one acre with a liberal estimate of our water use, would be covered by about a tenth of a foot of water. Quite a discrepancy to say the least!

TOWN OF NOTTINGHAM, NH
Zoning Board of Adjustment
Hearing Application

Applicant: Garrison Place Real Estate Investment Trust

Address: 9 Regis Drive Pelham, NH 03078

Property Owner: Same as applicant

Address:

Telephone # (603)-479-3362

Case # 01-02
Received: 4-14-01
Fee: \$150.00
Hearing: 5-1-01
Decision: approved
Appeal: _____
Rehearing: _____
Decision: _____

PROPERTY INFORMATION

Location: 145 Old Turnpike Road (Rte. 4) Map: 3 Lot: 10

Description of Property: 78.19 Ac in Nottingham on the north side of Route 4, mostly wooded, undeveloped except for partially renovated Barn and several water wells

Frontage: 1738.44 feet Left Side: 1987.27 feet Right Side: 1898.69 feet Rear: 1797.54 feet

Existing Use: Undeveloped woodland with partial renovated barn.

REQUEST

THE APPLICANT HEREBY REQUESTS:

A SPECIAL EXCEPTION AS PROVIDED IN:

ARTICLE III SECTION A.3

A VARIANCE TO ASK THAT TERMS BE WAIVED
AS STATED IN:

ARTICLE SECTION

AN APPEAL FROM AN ADMINISTRATIVE
DECISION IN RELATION TO:

ARTICLE SECTION

To permit the following: The construction and operation of a Water Bottling Facility in the Residential Zone.

If applying for, a variance, please state the circumstances that exist that prevent proper enjoyment of this land under the strict terms of the Zoning Ordinance and, thus, constitute unnecessary hardship: _____

If requesting an appeal, please state why the rehearing is necessary and why the original decision may be unlawful or unreasonable: _____

THE UNDERSIGNED ACKNOWLEDGES THAT ALL INFORMATION GIVEN ON THIS APPLICATION IS AS TRUE AND AS ACCURATE AS AVAILABLE DOCUMENTATION ALLOWS.

Signature

Date

4-4-2001

SPECIAL INSTRUCTIONS

1. This application must be accompanied by:

-a \$50.00 fee plus a \$5.00 fee for each abutter to be notified.

-a list of all abutting property owners and their mailing addresses (an abutter is a person owning property adjacent to or across the street from the property in question, as well as any person who may be affected by a decision regarding the property in question).

-appropriate Plans, drawn to scale, showing dimensions, abutting properties, structures, as well as tax map reference numbers, and a deed or survey of the property.

2. This application, and any documentation, must be submitted to the Zoning Board Secretary at least two weeks in advance of the next scheduled Zoning Board Hearing. The Board meets on second and fourth Tuesdays of each month as necessary.

3. The Public is invited to attend any Public hearing. Applicants or abutters may appear in person or may be represented by agent or counsel.

4. THE APPEAL PROCESS (See RSAs 677:2-10 for further clarification): Within a period of 20 days after a ZBA decision, any person affected by that decision has the right to appeal. A motion for rehearing must describe why it is necessary and why the original decision may be unlawful or Unreasonable. The ZBA must decide to grant or deny the hearing within 30 days. If the board reverses its decision, a new, aggrieved party, results and that party then has 20 days to appeal. A rehearing is granted based on compelling, new evidence; the board will not reopen the case on the same set of facts unless it is convinced that an injustice would otherwise be created.

NOTE: The Building Inspector may delay issuance of a building permit until the appeal period has passed.

Approved
6-5-01
FILE

NOTTINGHAM ZONING BOARD OF ADJUSTMENT
MINUTES
1 MAY 2001

Chair Walsh called the meeting to order at 7:15 pm. Also present were members Dorothy Nazarian, Earle Rourke, Doug Leib; alternate member/recording secretary Amy Stanton.

Chair Walsh opened the public hearing for Garrison Place Real Estate Investment Trust. Present for the hearing was Atty. Armand Hyatt, Ray Talkington, Dennis Hamel Larry Morse, Francesco Rotondo; abutters Jenn Gilman, Rick & Pat Woollett, David Drapeau; guests Mary Bonser, Sam Demeritt, Elaine Schmottlach, Betsy Saunders, Koki Leasure. Chair Walsh read the public hearing notice and designated Ms. Stanton to sit in for Beverly Barney. Chair Walsh informed the applicant that a full Board consists of 5 members and tonight there are only 4, Mr. Walsh continued to state Mr. Rotondo could request a recess to another date in the hopes of getting 5 members but he could not guarantee 5 members would be present at any given time. Atty. Hyatt representing Mr. Rotondo stated they would proceed. Atty. Hyatt gave a history of the project. Board members reviewed the plans. Atty. Hyatt stated the proposal is to construct and operate a water bottling facility on the property. Mr. Hyatt stated due to wetlands and the protective well radii the plant can only be put in the residential area of the lot. (The commercial/industrial zone extends 1000 feet back from Rte. 4 for lots with frontage on Rte. 4.) Atty. Hyatt read the criteria necessary to obtain a special exception and stated he felt the application met the criteria. Atty. Hyatt stated the plant will be in operation 24 hours per day. Mr. Hyatt continued to state trucking will be between the hours of 8:00 am - 5:00 pm Monday - Saturday, there will be no trucking on Sunday.

Ray Talkington, geohydrologist from Geosphere Environmental Management informed the Board there will be 3 wells and one natural spring outlet. Mr. Talkington stated the wells are bedrock and vary in depth from 500-60 feet. Mr. Talkington continued to state well 1 produces 100 gallons of water per minute, well 2 150 gallons per minute, and well 4 50 gallons per minute. Mr. Talkington stated these wells will require a

creating jobs, tax revenue, preserving open space, and no burden on the school system.

Chair Walsh made a motion to approve the application of Garrison Place Real Estate Investment Trust to allow the construction and operation of a water bottling facility on map 3 lot 10 subject to the following conditions: 1) Trucking operation is to be between the hours of 8:00 am - 5:00 pm Monday - Saturday. There is to be no trucking on Sunday. 2) No more than 60 trucks can enter and leave the premises within a 24 hour period. 3) N. H. Department of Environmental Services and the Nottingham Planning Board will monitor and approve the water testing to ensure residents will have no adverse impact in their own personal water systems. Mr. Rourke seconded the motion. The motion was approved with 4 affirmative votes (Leib, Walsh, Rourke, Nazarian) and 1 abstention (Stanton).


Mr. Rotondo thanked the Board.

Board members reviewed the mail.

Mr. Rourke made a motion to approve the minutes of 17 April 2001 as printed. Mr. Leib seconded the motion. The motion was unanimously approved. (Mr. Walsh abstained from voting as he was not present at that meeting.)

At 10:00 Mr. Walsh made a motion to adjourn. Ms. Nazarian seconded the motion. The motion was unanimously approved.

Respectfully submitted,

A large, stylized, and somewhat obscured word "COPY" is stamped over the signature and name.

Amy Stanton
Recording Secretary



DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3644 FAX (603) 271-2181



- Attachment #8 -
January 9, 2004

The Honorable John M. Gibson
New Hampshire House of Representatives
Legislative Office Building, 33 North State Street
Concord, NH 03301-6328

Re: NOTTINGHAM – USA Springs

Dear Representative Gibson:

The Department of Environmental Services (DES) is in receipt of your letter dated December 30, 2003 concerning the subject site. Your letter presents two questions. One question concerns the steps that USA Springs must adhere to in order to receive a conditional large groundwater withdrawal permit once containment of the groundwater contamination has been demonstrated. The second question concerns the steps that USA Springs must adhere to in order to demonstrate that containment has been achieved as per DES regulations and state statutes.

Our response to each question is attached to this correspondence.

We trust the attached information is responsive to your request. However, should you require additional information, please do not hesitate to contact either of the undersigned.

COPY
Anthony P. Giunta, P.G., Director
Waste Management Division

COPY
Harry T. Stewart, P.E., Director
Water Division

Attachment

cc: File

ATTACHMENT

RESPONSE TO QUESTION #1

CONCERNING LARGE GROUNDWATER WITHDRAWAL PERMIT REQUIREMENTS

On December 11, 2003, the Department issued Decisions and Findings on Motion for Rehearing concerning the denial of a large groundwater withdrawal permit and new source of bottled water approval requested by USA Springs, Inc. In this decision, the Department affirmed its Decision and Findings of August 12, 2003 and USA Springs applications for a large groundwater withdrawal permit and approval of a new groundwater source of bottled water were denied. On January 9, 2004, this decision may still be subject to appeal by various parties. Both water quantity and groundwater contamination issues were discussed in detail in the December 11, 2003 Decisions and Findings. We urge you to read the entire decision to obtain a complete understanding of this decision and the relationship between particular considerations. For purposes of this response, excerpts are provided below to provide an understanding of the water quantity issue and its relationship to the management of the identified groundwater contamination.

Concerning water quantity, Section 3.1 in part states: *"USA Springs proposed a monitoring and reporting program that could proactively prevent adverse water quantity or water level impacts from occurring. The Department finds USA Springs' final proposal to adequately address the probable impacts of the proposed large withdrawal (except for impacts associated with the alteration of the flow of contaminated groundwater).In addition to the two measures by USA Springs to mitigate impacts to private water users described above, the Department has authority under RSA 485-C and Env-Ws 388.23 and Env-Ws 388.25 to require further mitigation measures or to suspend or modify the permit so that withdrawals are further reduced or ceased altogether upon knowledge of adverse impacts. Data from the withdrawal test completed by USA Springs demonstrates that aquifer water levels begin rebounding rapidly when USA Springs' wells are shut down."*

Concerning groundwater contamination, Section 3.2.1 in part states: *"Before USA Springs' application to pump groundwater for its bottling facility could be approved, a containment system would have to be implemented and demonstrated to be effective at preventing the horizontal and vertical migration of contaminants under both non-pumping and pumping conditions at USA Springs. In this case, the vertical control of contaminant migration is further complicated by the fact that the contaminants of concern are chlorinated organic compounds with a density greater than water, meaning that over time they will migrate down into the deeper aquifer(s). To demonstrate that an adverse impact will not occur, an implemented treatment and containment remedy must ensure that contaminants will not be further drawn into the bedrock aquifer in the surrounding area, either vertically or horizontally. In this area, the aquifer is an important water supply resource not only as the possible source for USA Springs, but also for the majority of the existing residents whose drinking water wells are drilled into*

this aquifer. Based on data provided by USA Springs, groundwater derived from the wells at USA Springs would receive flow through an area in the aquifer beneath the surface of the Harnum Site where contamination exists. In a Remedial Action Plan (RAP) received August 12, 2003 and amended by supplemental material submitted November 10, 2003, USA Springs has proposed, at a conceptual level, a remedial action that would include the pumping and treatment of contaminated groundwater to prevent the vertical and horizontal migration of contamination and create a hydraulic barrier to contain groundwater contamination. While this may be an appropriate remedy, as discussed in more detail below, there is currently inadequate data to conclusively demonstrate that implementation of this remedy would be successful to the extent that the proposed USA Springs wells could be pumped at the proposed production volumes without adverse or irreversible impacts."

The relationship between the proposed USA Springs production well pumping rate and the groundwater contamination control is recognized by DES in the decision and must be considered during a new application process. For example, as discussed below, as part of a new application, USA Springs will need to supplement existing information through additional work to account for either aquifer stresses or improvements caused by a groundwater remediation system at the Harnum site, if one is installed.

USA Springs has reapplied for a Major Groundwater Withdrawal Permit under Env-Ws 388 and approval to operate a new source of bottled water pursuant to Env-Ws 389. DES may issue a permit with conditions to USA Springs once it has demonstrated compliance with Env-Ws 388-Major Groundwater Withdrawal and Env-Ws 389-Groundwater Sources of Bottled Water. In light of the previous application, this process requires an update of the information in the original application and analysis of the relationship of the proposed withdrawal and contamination remediation at the Harnum site (see response to Question #2, below). In this case, the Final Reports required by Env-Ws 388.17 and Env-Ws 389.19 must:

- Reference and incorporate data from the original applications and reports.
- Include discussion of additional work performed to address outstanding issues pertaining to groundwater contamination (see response to Question 2 below), and analysis associated with this additional work.
- As required by RSA 485-C:21, address technical and legal comments provided by the public during the public hearing and record processes.
- Revise the adverse impact assessment required by Env-Ws 388.16 and Wellhead Protection Area Delineation required by Env-Ws 389.15 based on the new work, especially to account for any additional aquifer stresses caused by a groundwater remediation system at the Harnum site (see Question 2 response), if one is installed, and new water users, if any, in the Study Area.

- Revise the impact assessment and wellhead protection area to include an updated water use and resource inventory, as required by Env-Ws 388.07 and 388.15, and an updated inventory of known and potential contamination sources required by Env-Ws 389.09 and Env-Ws 389.16.
- Revise the hydrogeologic conceptual model using data obtained from the data for the ongoing hydrogeologic investigations at the Harnum site in accordance with Env-Ws 388.06 and 388.14.
- Revise the adverse impact assessment to consider the impacts caused by the proposed remediation system coupled with the pumping of USA Springs' proposed withdrawals. Based on experience at other sites, DES anticipates this will require long term analysis of an active groundwater remediation system at the Harnum site (without pumping at USA Springs) to demonstrate groundwater contamination control, followed by a withdrawal test at the USA Springs site with the remediation system in operation (see Question #2).

RESPONSE TO QUESTION #2

STEPS FOR USA SPRINGS TO DEMONSTRATE HYDRAULIC CONTAINMENT OF THE CONTAMINANT PLUME UNDER PUMPING CONDITIONS FOR THE USA SPRINGS' PRODUCTION WELLS

- DES approval of "Combined Remedial Action Plan" (to be issued January 13, 2004).
- Submittal of a Groundwater Management Permit application, including a proposed Groundwater Management Zone as required by Env-Wm 1403.13 (Env-Wm 1403.13, Groundwater Management Permit Procedures, "*An applicant for a groundwater management permit shall submit a signed application for a groundwater management permit within 60 days following department approval of a remedial action plan*").
- Submittal of "Remedial Action Plan Design Report and Construction Plans and Specifications" as required by Env-Wm 1403.10 (Env-Wm 1403.10, "*the design report and construction plans and specifications shall be submitted to the department within 90 days of department approval of the remedial action plan*").
- DES approval of "Remedial Action Plan Design Report" (provided the report is acceptable, not more than 30 days following receipt of the report).
- Remedial facilities constructed and remedial action plan implemented (containment wells and the necessary additional bedrock monitoring wells installed; treatment system constructed; and a pump test conducted at the containment wells. Aquifer response will be assessed using both existing and

new bedrock monitoring wells as deemed necessary). Note that there is no statute or rule specifying a time frame for Remedial Action Plan implementation. However, we will assume 30-60 days for construction and implementation. Consistent with our approach to date, DES will maintain continuing communication with USA Springs during the construction and implementation period.

- Submittal of "As-Built Construction Report" as required by Env-Wm 1403.10 (Env-Wm 1403.10, *an as-built construction report shall be submitted to the department, within 90 days of construction completion, for any remedial action plan approved by the department*).
- Operation of containment system under non-pumping conditions (at USA Springs). Demonstration of adequate hydraulic containment under non-pumping conditions must be established before additional containment scenarios are enacted. In conjunction with operation of the system, continued monitoring of water levels and water quality in monitoring wells will be required. Water level and water quality data from multiple sampling events will be required to demonstrate hydraulic containment.
- Upon successful demonstration of hydraulic containment under non-pumping conditions; conduct pilot test with both USA Springs Wells and the hydraulic containment system operating. The proposed remediation system coupled with the pumping of USA Springs' proposed withdrawals may cause drawdowns in the aquifer that exceed the drawdowns measured during the November 2002 Gradient Corporation pump test. If this occurs, then additional monitoring points would need to be monitored to revise the wellhead protection area and adverse impact assessment as required by Env-Ws 388 and 389. DES's response to your first question provides detailed information about the requirements for obtaining a large groundwater withdrawal permit and approval to operate new sources of bottled water. The duration of the pilot test will be based on potentiometric head data and water quality data generated during the test. However, it is anticipated that the test will last a minimum of 10 days.
- If containment under pumping conditions is demonstrated and a large groundwater withdrawal permit is issued, future containment monitoring under a groundwater management permit will be required to ensure that containment is maintained during sustained pumping of USA Springs' production wells. Initially, USA Springs' production wells will not be allowed to operate at the requested permitted production volume. The start-up of the USA Springs' wells should include a schedule for incrementally increasing and decreasing withdrawal volumes from USA Springs' wells as water quality and water level data support such changes.



- Attachment C -
The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

July 1, 2004

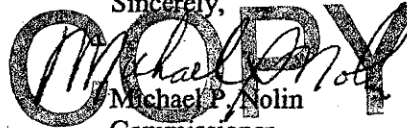
Francesco Rotondo
USA Springs Inc.
9 Regis Drive
Pelham, New Hampshire 03078

Re: USA Springs Large Groundwater Withdrawal Permit – No. LGWP 2004-0003

Dear Mr. Rotondo:

Enclosed is a large groundwater withdrawal permit and associated decision statement in response to your large groundwater withdrawal permit application dated December 29, 2003.

Please note that Condition 10 of the large groundwater withdrawal permit requires that USA Springs obtain new source approval for bottled water from the Department for each well in accordance with New Hampshire Administrative Rule Env-Ws 389. USA Springs will need to supplement its 2003 request for approval of new sources of bottled water with information required by Env-Ws 389.16 and 389.17 to demonstrate that uncontrolled contamination sources do not exist within the wellhead protection area of its withdrawals.

Sincerely,

Michael P. Nolin
Commissioner

cc: Town of Nottingham
Town of Barrington
Town of Northwood
M. Beliveau, Pierce Atwood
E. Kinder, Nelson, Kinder, Mosseau, & Saturely
R. Head, DOJ
A. Giunta, DES
H. Stewart, DES
B. Kernan, DES

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095
Telephone: (603) 271-3644 • Fax: (603) 271-2181 • TDD Access: Relay NH 1-800-735-2964
DES Web site: www.des.nh.gov



The
NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES
hereby issues
LARGE GROUNDWATER WITHDRAWAL PERMIT

NO. LGWP-2004-0003

to the permittee

USA SPRINGS, INC
9 REGIS DRIVE
PELHAM, NEW HAMPSHIRE 03078
(603 942 5660)

for the withdrawal of the following volumes of groundwater from the following on-site wells for the purpose of bottling water

Bedrock Well USA-1	106,486 gallons over any 24-hour period
Bedrock Well USA-2	179,874 gallons over any 24-hour period
Bedrock Well USA-4	21,168 gallons over any 24-hour period

located at 145 Old Turnpike Road in Nottingham, New Hampshire (Lot 10, Tax Map 3)

Date of Issuance: July 1, 2004
Date of Expiration: July 1, 2014

Pursuant to authority in N.H. RSA 485-C:21, the New Hampshire Department of Environmental Services (Department), hereby grants this permit to withdraw groundwater from USA -1, USA-2, and USA-4 subject to the following conditions:

1. The permittee shall comply with the requirements of Env-Ws 388 at all times.
2. Pursuant to RSA 485-C:15, the permittee shall allow any authorized member of the Department's staff, or its agent, to enter the property covered by this permit for the purpose of collecting information, examining records, collecting water level measurements, or undertaking other action associated with this permit.
3. Water Conservation: In addition to the measures the permittee proposes in its Permit Application dated February 3, 2003, which is incorporated herein by reference, the following measures shall be implemented:
 - a. The permittee shall complete annual pressure testing and leak detection surveys of piping connecting the wells to the bottling plant. All leaks must be repaired within 60 days of discovery. Alternatively, the permittee may utilize meters and totalizers at the wellhead and the bottling plant to determine if water losses exceed 5%. If water losses exceed 5% between the wellhead and the bottling plant, a leak detection and repair program must be implemented. Meters and totalizers must meet the requirements in item 4, below. The permittee must report a summary of activities it undertook to identify and repair pipeline leakage in an annual report by January 31 of each year.
 - b. The permittee shall maintain shut-off devices in its bottling process that prevents the discharge of unused water to waste.
4. Metering Requirements: Withdrawals from all wells must be metered at all times. The permittee shall provide the Department with a certificate of calibration for each meter, as well as the performance specifications of the meter as prepared by the manufacturer. All meters must be sized and calibrated to monitor the applicable withdrawal and flow rates. The permittee shall also provide the Department with the maintenance and calibration requirements of the meter as prescribed by the manufacturer. The permittee shall maintain and calibrate the meters in accordance with the specifications of the manufacturer. The permittee shall document and maintain records of all meter maintenance and calibration activities and submit this information to the Department in an annual report by January 31 of each year.
5. Monitoring and Requirements

The permittee shall establish and maintain the monitoring and reporting program as described below. The monitoring and reporting program shall be established within the next 60 days and be implemented for at least three months prior to initiating large groundwater withdrawals at the USA Springs site.

- a) Water Level Monitoring: The permittee shall complete the following water level monitoring and reporting program:

- i) Off-site Private Wells: Install pressure transducers and data loggers and measure water levels at a frequency of at least every four hours in the following private wells:

Nottingham Private Wells

Lot	Address
3-6	165 Old Turnpike Road
3-2	162 Old Turnpike Road
3-2-1	158 Old Turnpike Road
3-3	166 Old Turnpike Road
3-2A	164 Old Turnpike Road
2-7	181 Old Turnpike Road
2-5	187 Old Turnpike Road
2-8A-4	186 Old Turnpike Road
3-11-15	3 Lincoln Drive
3-11-9	19 Lincoln Drive
3-12-1	86 Freeman Hall Road
14-16	45 Garland Road
14-18	39 Garland Road

Barrington Private Wells

Lot	Address
7-2B-1	4 Wood Road
7-3-8	32 Wood Road

- ii) On-site Production Wells: Install pressure transducers and data loggers and measure water levels at a frequency of at least every four hours at USA-1, USA-2 and USA-4.
- iii) On-site Monitoring Wells: Install pressure transducers and measure the water levels at a frequency of at least every four hours at the existing and proposed monitoring well locations described in Section 1.2 of Attachment 2 of a letter dated September 11, 2003 incorporated herein by reference from the Gradient Corporation to the Department. The permittee shall install a staff gage, shallow monitoring well, and deep over burden monitoring well at each of the following wetland monitoring sites after obtaining approval from the Department: WM-4, CON1, and CON2. The permittee shall provide the Department with soil boring data and monitoring construction details prior to seeking approval from the Department.

If a private well owner denies permission to monitor water levels, then the permittee shall propose an alternative monitoring location to the Department for

approval. The permittee shall monitor the alternative location upon receiving approval from the Department.

All water level monitoring shall be completed by a person who can demonstrate, by education or experience, competency in collecting and reporting hydrogeologic measurements.

All monitoring data shall be submitted to the Department by the last business day of each calendar month in an electronic format. Water levels shall be reported to the Department as feet relative to the National Geodetic Vertical Datum of 1929. The permittee shall note any relevant observations that may affect water level measurements.

A summary of all monitoring data shall be prepared in a hard copy format and submitted to the Department by January 31 of each year. The annual report shall include all field notes documenting the water level monitoring activities for the preceding year. All field notes shall be signed and dated by the personnel responsible for collecting measurements.

Monitoring well locations and frequencies may be added or changed if the water level data obtained in paragraphs (i)-(iii) above contradict the information obtained in the permittee's application, or if additional data points are required to assess the potential for adverse impacts to occur.

- b) Wetlands - Implement the wetland monitoring program summarized in Attachment 2, Section 1.2 of a letter dated September 11, 2003 from the Gradient Corporation to the Department. The wetlands monitoring program shall initiate one year prior to initiating withdrawals and continue indefinitely as a condition of the permit. All work shall be conducted under the direct oversight of a New Hampshire Certified Wetland Scientist. The tri-annual wetland survey must provide a clear determination as to whether or not an adverse impact has occurred, may occur, or has not occurred over the monitoring period. An annual wetland monitoring report must be submitted by January 31 of each year. The results of the tri-annual wetland monitoring and associated impact assessment must be included in the annual wetland monitoring report unless requested sooner by the Department.
- c) Stream Gaging: The permittee shall install a weir in the unnamed stream that flows from its site into Round Pond. The weir shall be installed in a stream channel as close as is technically, logistically, and legally possible to Round Pond. The stream flow at the weir shall be monitored weekly starting one year prior to initiating withdrawals, unless snow and ice make measurements not possible. The permittee may propose an alternative method to accurately measure stream flow to the Department. This permit condition shall not be enforced if the permittee can demonstrate that property owners will not grant access to the stream for monitoring.

6. Mitigation Requirements

- a) In the event that adverse impacts occur, the permittee shall comply with all of the requirements below and with the impact mitigation and source replacement requirements of Env-Ws 388.
- b) Prior to initiating the large groundwater withdrawal, the permittee shall notify any owner of a private well within 7000 feet of USA-1, USA-2, and USA-4. The permittee shall provide copies of the certified returned receipt to the Department. The permittee shall explain to owners of wells in the area that their well may be influenced by the withdrawal at USA Springs. The permittee shall provide the homeowner with contact information for both the permittee and the Department in the event a homeowner believes they may be adversely impacted.
- c) The permittee shall notify the Department of any adverse impact within 12-hours of receiving such information. Furthermore, the permittee shall provide potable water for drinking and cooking purposes to a well owner that the Department has determined to be adversely impacted. The permittee shall have 12 hours to provide drinking and cooking water after being notified of an occurrence of an adverse impact. The permittee shall provide potable water for other domestic uses within 36 hours of being notified of an adverse impact (e.g., lower well pump, install higher capacity well pump, drill a new well, or truck bulk water to the property). A permanent alternative water supply that produces water quality that complies with Federal and State drinking water requirements and a quantity of water that complies with the requirements of Env-Ws 388.18, shall be provided to an adversely impacted water users within 30 days of the Department determining that a water user had been adversely impacted.

Contracts with companies capable of providing water and well services (including drilling of new wells) must be developed and maintained prior to and after initiating the withdrawal such that in the event that impacts are noted at private wells, mitigation steps can be undertaken expeditiously. Copies of these contracts shall be provided to the Department prior to initiating the large groundwater withdrawal.

- d) Where the status of unanticipated impact is not clear, the permittee shall gather information needed to quantify the impact and determine its status relative to adverse impact criteria defined under Env-Ws 388.18 and provide this information to the Department within 48 hours of being notified by the Department. A verified adverse impact shall be mitigated as described in paragraph (c), above.
- e) The Department will routinely review the results of all monitoring data, and if water level monitoring data indicates that groundwater is being extracted at a rate that exceeds natural recharge on average, then the Department will modify the permit in accordance with Env-Ws 388 in order to prevent adverse impacts from occurring. In addition, the permittee shall operate the well in accordance with the management procedures described below:

STAGE I MANAGEMENT PROCEDURES:

In the event that any of the following monitoring triggers are exceeded, output from each production well shall be reduced to 75% of the permitted yield capacity:

Trigger A: A fifteen foot drawdown below the 180-day no-recharge projections (at locations and associated values listed in Table 1), unless it is determined by the Department that the drop in water levels in a specific monitoring point is erroneous based upon an analysis of water levels in all other similar monitoring points.

Trigger B: Moderate Drought Condition as determined by U.S. Drought Monitor which is administered by the U.S. Department of Agriculture, Department of Commerce, and National Oceanic and Atmospheric Administration.

Trigger C: An adverse wetland impact determination based upon the criteria of Env-Ws 388.18(c)(7) by the Certified Wetland Scientist completing the monitoring described in Section 4, or the Department.

As part of Stage I management procedures, the permittee shall increase the frequency of reporting of all on-site and off-site water level measurements to the Department, and submit all measurements electronically by the 15th and 30th day of each calendar month.

STAGE II MANAGEMENT PROCEDURES

In the event that any of the conditions listed below are exceeded, then output from each production well shall be reduced to 50% of the permitted yield capacity:

Trigger A: A twenty foot drawdown below the 180-day no-recharge projections (at locations and associated values listed in Table 1), unless it is determined by the Department that the drop in water levels in a specific monitoring point is erroneous based upon an analysis of water levels in all other similar monitoring points.

Trigger B: Severe Drought Condition as determined by U.S. Drought Monitor which is administered by the U.S. Department of Agriculture, Department of Commerce, and National Oceanic and Atmospheric Administration.

Trigger C: An adverse wetland impact determination based upon the criteria of Env-Ws 388.18(c)(7) by the Certified Wetland Scientist completing the monitoring described in Section 4 or the Department that is not corrected by Stage I.

As part of Stage II management procedures, the permittee shall increase the frequency of reporting of all on-site and off-site water level measurements to the Department, and submit all measurements electronically by the 15th and 30th day

of each calendar month.

STAGE III MANAGEMENT PROCEDURES

In the event that any of the following triggers are exceeded based on monitoring at the private wells outlined above, the cumulative withdrawal from all on-site wells shall be reduced to below 57,600 gallons over any 24-hour period.

Trigger A: A thirty foot drawdown below the 180-day no-recharge projections (at locations and associated values listed in Table 1), unless it is determined by the Department that the drop in water levels in a specific monitoring point is erroneous based upon an analysis of water levels in all other similar monitoring points.

Trigger B: Extreme Drought Condition as determined by U.S. Drought Monitor which is administered by the U.S. Department of Agriculture, Department of Commerce, and National Oceanic and Atmospheric Administration.

Trigger C: An adverse wetland impact determination based upon the criteria of Env-Ws 388.18(c)(7) by the Certified Wetland Scientist completing the monitoring described in Section 4 or the Department that is not corrected by Stage II.

As part of Stage III management procedures, the permittee shall increase the frequency of reporting of all on-site and off-site water level measurements to the Department, and submit all measurements electronically by the 15th and 30th day of each calendar month.

STAGE IV MANAGEMENT PROCEDURES

In the event that a monitoring report indicates that the withdrawals are adversely impacting wetlands and the adverse impacts will continue, withdrawals at the site shall cease.

7. Prior to initiating large groundwater withdrawals, the concentration of all contaminants in the overburden and bedrock aquifer associated with historic activities at the Just Cause Site at 155 Old Turnpike Road (DES#200302008) shall be remediated to concentrations below New Hampshire's Ambient Groundwater Quality Standards (AGQS) as set forth in Env-Wm 1403. Withdrawals at the USA Springs site may not be initiated until the Department has issued a "Certificate of No Further Action" for the Just Cause site in accordance with Env-Wm 1403.19.
8. The permittee shall register its new sources of water under the Registered Water User Program and maintain the water use reporting requirements of Env-Wr 700 or its successor rules at all times.
9. The permittee shall apply for renewal of this permit at least 90 days prior to its

expiration date. The permittee shall continue to comply with all conditions in this permit until the permit is renewed or the facility is closed in accordance with all applicable requirements, regardless of whether a renewal application is filed.

10. The permittee shall obtain new source approval for Bottled Water from the Department in accordance with Env-Ws 389 prior to initiating withdrawals at the site for the purpose of bottling water.

The issuance of this permit is based upon the analysis and findings described in the attached document dated July 1, 2004 and titled "Decisions and Findings Regarding USA Springs, Inc., Application for Large Groundwater Withdrawal Permit, December 29, 2003."

Any person aggrieved by any terms or conditions of this permit may appeal in accordance with RSA 541 within 30 days.

Michael P. Nolin, Commissioner
Department of Environmental Services

Table 1: Trigger Water Level Elevations for USA Springs Large Groundwater Withdrawal Permit 2004-003

Town Map/Lot Number	180-Day No-Recharge Drawdown	Stage I Trigger Level	Stage II Trigger Level	Stage III Trigger Level	Address
	(feet-NGVD)	(feet-NGVD)	(feet-NGVD)	(feet-NGVD)	
3-6	344	329	324	314	165 Old Turnpike Road
3-2	363	348	343	333	162 Old Turnpike Road
3-2-1	379	364	359	349	158 Old Turnpike Road
3-3	360	345	340	330	166 Old Turnpike Road
3-2A	365	350	345	335	164 Old Turnpike Road
2-7	341	326	321	311	181 Old Turnpike Road
2-5	357	342	337	327	187 Old Turnpike Road
2-8A-4	381	366	361	351	186 Old Turnpike Road
3-11-15	370	355	350	340	3 Lincoln Drive
3-11-9	371	356	351	341	19 Lincoln Drive
3-12-1	370	355	350	340	86 Freeman Hall Road
14-16 ¹	0 ¹	Note 1	Note 1	Note 1	45 Garland Drive
14-18 ¹	0 ¹	Note 1	Note 1	Note 1	39 Garland Drive
7-28-1	374	359	354	344	4 Wood Road
7-3-8	303	288	283	273	32 Wood Road

1. Static water levels for these wells shall be determined when monitoring initiates. Stage I, I and III trigger levels shall be adjusted based on the actual static water level in these wells.
2. If an alternative monitoring location is used as described in condition 5a of the permit, then the trigger levels shall be determined as described by footnote 1, above.



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

August 9, 2004

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Save Our Groundwater
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**RE: APPLICATION OF USA SPRINGS
MOTIONS FOR ADJUDICATIVE HEARING**

Dear Attorney Kinder and Ms. Hart:

The decision contained in this letter is being issued in response to Motions for Adjudicative Hearing filed by or on behalf of the Town of Nottingham and Save Our Groundwater ("SOG").

Discussion

Both pending Motions for Adjudicative Hearing rely on RSA 541-A:31 and Env-Ws 388.23. See Nottingham at ¶¶3, 4; SOG at ¶¶2, 3. The decision to grant a large groundwater withdrawal permit to USA Springs (the "Permit") is governed by RSA ch. 485-C. All appeals from the decision to issue the Permit are governed by RSA 485-C:21, VI which states "[r]ehearings and appeals from a decision of [Environmental Services] under this section shall be in accordance with RSA 541."

RSA 541 provides for a two step appeal process. First, a motion for rehearing must be filed within thirty days of the adverse decision. The agency then has ten days to grant or deny the motion for rehearing, or suspend the order or decision complained of pending further consideration. RSA 541:5. If the motion for rehearing is denied, then an appeal may be taken directly to the Supreme Court. RSA 541:6. Both Nottingham and SOG have filed separate motions for rehearing.

The adjudicative hearing process authorized by RSA 541-A is inconsistent with the appeal process required by RSA 485-C:21, VI. Because the process governing appeals from a large groundwater withdrawal permit decision is specifically governed by RSA 541, the adjudicative hearing authorized by RSA 541-A is not applicable to this case.

Env-Ws 388.23(f) does state: "[Environmental Services] shall provide the applicant with an opportunity for a hearing in accordance with RSA 541-A:31 if the permit is denied." The right to an adjudicative hearing under this rule is limited to the applicant. Because neither of the parties requesting the adjudicative hearing are the applicant, the rule does not apply.

Furthermore, the constitutional principle of equal protection does not yield a different result. "The doctrine of equal protection demands that 'all persons similarly situated should be treated alike....'" *State v. Laporte*, 134 N.H. 73, 76 (1991)(citations omitted). An applicant seeking a license from the State in order to operate a business is not similarly situated to non-applicants. The application presented to a state agency is the only mechanism by which an applicant is allowed to seek an interest in receiving a license from the applicable agency. Although Nottingham and SOG have asserted they will suffer damages, the claim of damages does not make them similarly situated to the applicant for a permit. Thus, all persons similarly situated are treated alike under the rule.

The second prong of the equal protection analysis is whether the classifications created by the rule affect a fundamental right or classify on the basis of race, creed, color, gender, national origin, or legitimacy. *Id.* Neither appellant has identified a fundamental right that affects them by virtue of the permit issued to USA Springs. In addition, neither has claimed that the rule classifies on the basis of race, creed, color, gender, national origin, or legitimacy. Therefore, "the 'legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.'" *Id.* (citations omitted). The rule expresses an interest to provide the applicant, who has been denied access to a permit, is given a full and fair opportunity to be heard. The rule does express a legitimate state interest, and is valid under an equal protection analysis.

Notwithstanding the legitimacy of the rule under an equal protection analysis, if the rule did violate equal protection as asserted by the appellants, the rule itself would be invalid. Thus, it would simply not apply to either the applicant or the appellants.

In addition, Environmental Services' authority to promulgate Env-Ws 388.23 is questionable. The Supreme Court has held that "[i]f a board, in making a rule, acts beyond the limited discretion granted by a valid enactment, the rule is invalid." *Kimball v. Board of Accountancy*, 118 N.H. 567, 568 (1978). Given that the General Court has specifically limited the appeal process to RSA 541, the rule relied upon by the appellants is potentially invalid.

This decision is consistent with Environmental Services' obligation to provide due process to all affected parties. "Procedural due process requires an opportunity granted at a meaningful time and in a meaningful manner for a hearing appropriate to the nature of the case." *Ribley Tramway Company, Inc. v. Stickney*, 129 N.H. 140, 148 (1987)(citations omitted). Environmental Services has held public hearings or meetings on June 18, 2001, July 17, 2001,

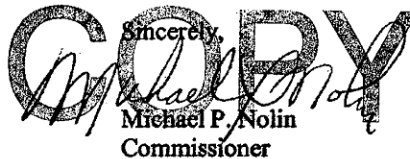
August 1, 2001, August 29, 2002, October 14, 2003, February 5, 2004 and April 7, 2004. After USA Springs filed its first large groundwater withdrawal application on May 24, 2001, Environmental Services maintained a large public contact list for the project and provided frequent updates to interested municipalities and individuals after both the first and second applications were filed. Notices and status reports were sent both by direct mail and electronic mail broadcasts. Anyone with an interest in the permit application was encouraged to provide written and verbal comments. Many people took advantage of the opportunity to comment. Hearings and public input meetings were held in both Nottingham and Barrington to make them as accessible as possible. The hearings and meetings were all well attended, and anyone who wished to provide verbal input was provided the opportunity. Written comments have been received throughout, resulting in an extensive written record. In the context of a permit issued by Environmental Services, all interested parties were given a full and fair opportunity to participate in the decision process.

Not only has the process employed by Environmental Services been fundamentally fair, but also the appeal process provides an opportunity to seek rehearing, and if dissatisfied by the decision on rehearing, an appeal to the New Hampshire Supreme Court. Applying the rule of fundamental fairness, the process applied to the USA Springs large groundwater withdrawal application has fully complied with due process.

Conclusion

For the reasons stated above, the Motions for Adjudicative Hearing by the Town of Nottingham and Save Our Groundwater are denied.

Any party aggrieved by this Decision may appeal in accordance with RSA 485-C:21 and RSA chapter 541.

Sincerely,

Michael P. Nolin
Commissioner

cc: E. Tupper Kinder, Esq.
Mark E. Beliveau, Esq.
SOG, c/o Denise Hart
Steven B. Conklin, P.E.
James H. Page, Jr.
Armand M. Hyatt, Esq.
Anthony Soltani, Esq.
Richard W. Head, DOJ



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

August 9, 2004

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**RE: APPLICATION OF USA SPRINGS
MOTIONS FOR REHEARING**

Dear Appellants:

The decision contained in this letter is being issued in response to Motions for Rehearing filed by or on behalf of the Towns of Nottingham and Barrington, Save Our Groundwater ("SOG"), Steven Conklin, James Page, Thomas Marshall and Robin Marshall. The motion filed by James Page, Thomas and Robin Marshall shall be collectively referred to as "Page."

Procedural Background

The historical background is outlined in the Department of Environmental Services ("Environmental Services") Decision and Findings dated July 1, 2004. On July 1, 2004, Environmental Services issued Large Groundwater Withdrawal Permit No. 2004-0003 (the "Permit") to USA Springs, Inc. On July 1, 2004, Environmental Services also issued Decision and Findings ("Decision and Findings") associated with the Permit approval. The Permit and Decision and Findings are incorporated into this Decision and are not repeated except where necessary to clarify a response to one of the Motions for Rehearing.

All appeals from the decision to issue the Permit are governed by RSA 485-C:21, VI which states "[r]ehearings and appeals from a decision of [Environmental Services] under this section shall be in accordance with RSA 541." "The purpose of a rehearing 'is to direct attention to matters said to have been overlooked or mistakenly conceived in the original decision, and thus invites reconsideration upon

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the record upon which that decision rested.'... RSA 541:3 provides that the commission 'may grant such rehearing if in its opinion good reason therefor is stated in said motion.'" *Dumais v. State*, 118 N.H. 309, 311-12 (1978)(citations omitted).

Discussion

The appellants have raised several issues. In this Decision, Environmental Services has combined redundant issues and responds to each below. In its review of the pending motions, Environmental Services has identified twenty-four separate, although similar, claims. Each are discussed below. The Town of Nottingham attached additional comments from Thomas Ballesterio to its Motion. Those comments are also addressed below.

1. Public Benefit/Public Trust

Nottingham has asserted that Environmental Services acted unlawfully or unreasonably by failing to "assure that the issuance of the permit has maximized public benefit and considered the implications on groundwater resources for future generations." Nottingham at p. 7. Environmental Services addressed this issue in its Decision and Findings, Section 5.7. In addition, the proper standard when evaluating use of public trust resources is the application of the rule of reasonableness, not maximization. Reasonableness, in the context of a large groundwater withdrawal application, is determined by the application of the rules governing large groundwater withdrawal applications. Environmental Services applied those rules in reaching its decision.

Concerns regarding the applicant's test data, conceptual model, sustainability, public interest and monitoring program were all addressed in the Decision and Findings. See Decision and Findings, Sections 4 and 5 and Permit Conditions 5 and 6. The pending Motions for Rehearing fail to raise issues concerning public benefit/public trust that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

2. Adverse Impacts – Harnum Site

Nottingham and Barrington have asserted that Environmental Services acted unlawfully or unreasonably by failing to assure that there would be no adverse impacts caused by contamination at the former Harnum site (Nottingham, p. 8). Env-Ws 388.23(c)¹ states: "The department shall not issue a new, or renew an existing major withdrawal permit if it is demonstrated that a withdrawal will result in adverse impacts which cannot or will not be mitigated."

Condition 7 of the Permit states: "Prior to initiating large groundwater withdrawals, the concentration of all contaminants in the overburden and bedrock aquifer associated with historic activities at the Just Cause Site² at 155 Old Turnpike Road (DES#200302008) shall be remediated to concentrations below New Hampshire's Ambient Groundwater Quality Standards (AGQS) as set forth in Env-Wm 1403. Withdrawals at the USA Springs site may not be initiated until [Environmental Services] has issued a "Certificate of No Further Action" for the Just Cause site in accordance with Env-Wm 1403.19." Contamination at the former Harnum site is also addressed in the Decision and Findings at Section 4.3 and 5.10.

The Permit conditions that address the former Harnum site are different than what the applicant requested for its first permit application. During the first application, Just Cause Realty Trust proposed to

¹ The Town of Nottingham incorrectly cites to Env-Ws 388.28(c) in its Motion

² Just Cause Realty Trust is the current owner of what was formerly known as the Harnum site.

contain the contamination at the former Harnum site. Thus, pumping from USA Springs would occur while the contamination remained in the groundwater. Environmental Services rejected that proposal. The intent of the Permit conditions that address groundwater contamination is to ensure that groundwater quality at the former Harnum site meets AGQS *prior* to activation of the pumps on the USA Springs site. Thus, the issues and concerns related to contamination were significantly different between the first and second application.

Permit Condition No. 7 and the findings in the Decision and Findings address the concerns raised regarding the contamination at the former Harnum site. The requirements of Env-Ws 388.23(c) are met because the contamination must be remediated to AGQS prior to pumping under the Permit. The contamination can and will be mitigated before pumping. The pending Motions for Rehearing fail to raise issues concerning potential adverse impacts from contamination at the Harnum site that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

3. Time for Implementation

Nottingham and SOG both assert that Environmental Services acted unlawfully or unreasonably by issuing the Permit, which they believe will not be implemented for "5 to 10 years" (Nottingham p. 9; SOG p. 4). The 5 to 10 years is presumed to be the appellants' estimate of the time it will take to comply with Condition 7 described in Section 3 of this Decision. The applicant has concluded that the remediation at the former Harnum site will be substantially less than the time hypothesized by the appellants. In any event, all permits necessarily authorize an activity for a period of time. The Permit issued to USA Springs expires on July 1, 2014, ten years after it was issued. As with any long term permit, conditions may change and the level of scientific understanding may change during the course of the permit. Because scientific investigation and knowledge is always advancing, a permitting agency must make its decisions based upon the scientific knowledge available at the time it renders a decision. Pursuant to Env-Ws 388.26(d), "permit renewals shall be issued in accordance with the criteria for new permits under Env-Ws 388.23 and Env-Ws 388.26." See Decision and Findings, Section 5.7 and Permit Condition 6(e). As is stated in the Decision and Findings, "[i]ssuing a large groundwater withdrawal permit in which the permittee does not immediately withdraw water does not set aside water for future use. If another large groundwater user (private or public) were to develop a withdrawal site across the street from USA Springs and obtain the necessary approvals to withdrawal (*sic*) large volumes of water, then USA Springs would be protected up to its average daily withdrawal volume for each calendar month as determined by its historic water use reporting to the state. If it has not withdrawn any water, then their protected flow volume would be 0 gallons per day." Decision and Findings, Section 5.10(d).

Nottingham requests that Environmental Services wait for the completion of a USGS groundwater sustainability project, estimated to be completed in January 2006. Even if Environmental Services disregarded the requirements of RSA 485-C and Env-Ws 388, and waited two or three years, the USGS study would only provide general, regional water availability data, not data on actual water availability in the area potentially impacted by the USA Springs' withdrawal. It is not expected that the bedrock aquifer in the vicinity of the USA Springs site will be modeled in the USGS study, and calculations of water availability at the subbasin level will be completed based on existing data.

The Permit also requires monitoring for, and mitigation of, adverse impacts. See Section 5 of this Decision.

The pending Motions for Rehearing fail to raise issues concerning the timing of actual water withdrawals that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

4. Need

Nottingham, Barrington and SOG assert that Environmental Services acted unlawfully or unreasonably by failing to require the applicant to demonstrate need (Nottingham p. 11; Barrington p. 17; SOG p. 2). Environmental Services addressed the issue of need in its Decision and Findings, Section 4.2 and Permit Condition 3. Need in the context of a large groundwater withdrawal permit is a term of art used to describe efficiency or conservation. The Permit ensures that the system installed by USA Springs will remain efficient and conserve water throughout the life of the Permit.

The pending Motions for Rehearing fail to raise issues concerning need that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

5. Adverse Impacts to Other Property Owners

Nottingham and Page have asserted that Environmental Services acted unlawfully or unreasonably by issuing a permit that will allow adverse impacts to occur to other property owners (Nottingham p. 13, Page p. 2). Page states that his well will specifically be impacted. The Permit does not authorize or otherwise allow adverse impacts to occur. In its Decision and Findings (Section 4.1 and 5.4), Environmental Services provides a detailed analysis of issues raised regarding potential impacts to abutting property owners. As stated in the Decision and Findings, potential impacts will be monitored throughout the life of the Permit. If adverse impacts occur that require mitigation, the Permit includes specific conditions that require mitigation. See Decision and Findings Sections 5.4, 5.10, Permit Conditions Nos. 5-6.

The pending Motions for Rehearing fail to raise issues concerning adverse impacts to other property owners that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

6. Reasonable and Sustainable Use

Nottingham has asserted that Environmental Services acted unlawfully or unreasonably by failing to require the applicant to demonstrate a reasonable and sustainable use (Nottingham p. 14). In addition, Nottingham's Motion for Rehearing states:

The pumping test data show that the wells never stabilized, even after 10 days of pumping. [Environmental Services'] own regulation with respect to small community water systems contain as a requirement in the test for sustainability that wells stabilize. Env-Ws 378.10(d)(3). This regulation is specifically referenced in Env-Ws 389.11, regulations with which USA Springs must comply. For unknown reasons, [Environmental Services] refused to address this obvious inconsistency in its decision and so its decision is unlawful and unreasonable.

This statement in Nottingham's Motion is not an accurate application of the rules governing USA Springs' application. Env-Ws 378 applies to small community water systems. Rules for large community water systems, formerly contained in the Env-Ws 378 rules, are now within Env-Ws 379. Env-Ws 389.11 (bottled water rules) requires "[f]or all wellheads where external force will be used to collect water, the source evaluation shall be conducted in accordance with the pumping test requirements for large community water system wells specified in Env-Ws 378.09 or successor rules...." Emphasis added. The reference to 378.09 is specific to large community water system wells. The rules for community water systems were extensively modified and restructured in 1999. The successor to Env-Ws

378 is now Env-Ws 379. Env-Ws 378 only applies to water systems that pump less than 40 gallons per minute (See Env-Ws 378.02 and 378.03). Thus, the basis for rehearing due to an alleged failure to follow the requirements of Env-Ws 378 is not applicable to the USA Springs application.

The Permit specifically and reasonably addresses the appellants' concerns of sustainability. The Permit includes specific and detailed monitoring requirements (Condition 5) mitigation requirements (Condition 6) and management requirements (Condition 6). All of these conditions are designed to test for pumping that may exceed a sustainable yield; and mitigation as necessary to prevent withdrawals that exceed a sustainable yield. Indeed, the Town of Nottingham's expert, Mr. Ballesterio, has previously sought new source approval conditional on long term water level monitoring verifying the sustainability of the withdrawal. See "Final Report - Municipal Water Supply Well at the Route 106 Property - Pembroke, New Hampshire" dated April 12, 1994 by Dr. Thomas P. Ballesterio and Ellen M. Douglas.

Concerns regarding understanding the origin of water derived from the pumped well, its relationship to aquifer recharge, storage and discharge, and the response of an aquifer to precipitation and pumping were all addressed by Environmental Services in its Decision and Findings. See Decision and Findings, Section 5.

Environmental Services has addressed the issues of sustainability in its permit conditions (Conditions 5-6) and in the Decision and Findings (Sections 5.3, 5.10). The pending Motions for Rehearing fail to raise sustainability issues that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

7. Wetlands

Nottingham and Barrington assert that Environmental Services acted unlawfully or unreasonably by failing to require, by clear and convincing evidence, that Barrington Prime Wetland #40 will not be adversely impacted (Nottingham p. 16; Barrington p. 10). Barrington also states that Environmental Services' decision to not hold a prime wetland hearing pursuant to RSA 482-A was illegal or unreasonable.

The clear and convincing evidence standard applies to wetland permits, not large groundwater withdrawal permits. See RSA 482-A:11, IV. Environmental Services addressed the applicability of RSA 482-A to the USA Springs large groundwater withdrawal application in its letter of June 12, 2003 to Attorney Beliveau. The June 12, 2003 letter is incorporated in this Decision as if stated in full.

In addition, the appeal process from a wetland permit decision is governed by RSA 482-A, not RSA 485-C. As the prime wetland issue falls under RSA 482-A, a Motion for Rehearing under RSA 541 is not the proper mechanism for raising the issue.

The pending Motions for Rehearing fail to raise wetland issues that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

8. Lamprey Basin

Nottingham has asserted that Environmental Services acted unlawfully or unreasonably by allowing 307,000 gallons per day to be removed from the Lamprey Basin (Nottingham p. 17; SOG p. 5). Environmental Services discussed issues raised about the Lamprey River in Section 5.6 of its Decision and Findings. To the extent the issues raise public purpose or public trust issues, those issues are addressed in Section 1 of this Decision.

Nottingham has also asserted that Environmental Services acted unlawfully or unreasonably by failing to comply with RSA 483:9. Following surface waters from the USA Springs site, the Lamprey River is over nine miles from the site. As the crow flies, the nearest stretch of the Lamprey River is approximately seven miles from the USA Springs site. The Permit does not authorize the withdrawal of water from a designated natural river or segment. The Permit specifically addresses monitoring for adverse impacts and mitigation of adverse impacts.

The pending Motions for Rehearing fail to raise issues concerning water diversion from the Lamprey Basin that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

9. Burden of Proof

Nottingham has asserted that Environmental Services acted unlawfully or unreasonably by failing to require the applicant to meet its burden of proof (Nottingham p. 18). Environmental Services has not required that opponents to the permit submit any information. Environmental Services acknowledges that opponents to the Permit have been actively involved and have submitted a significant volume of information for evaluation by Environmental Services. Environmental Services has evaluated all of the information it has received, and based its decision to issue the Permit in accordance with the requirements of RSA 485-C and Env-Ws 388.

The pending Motions for Rehearing fail to raise issues concerning the parties' burden of proof that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

10. Public Interest

Nottingham and SOG have asserted that Environmental Services acted unlawfully or unreasonably because the Permit conditions do not protect the public interest (Nottingham p. 21, 24; SOG p. 6). Similar concerns are addressed in Section 1 of this Decision and in the Decision and Finding.

The pending Motions for Rehearing fail to raise issues concerning the public interest that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

11. Nottingham's Comments

Nottingham has asserted that Environmental Services acted unlawfully or unreasonably by failing to make written findings with respect to recommendations of the Nottingham Selectmen and their expert (Nottingham p. 25). Nottingham's Motion fails to identify which comments Environmental Services failed to address in its Decision and Findings.

The Decision and Findings do address comments submitted by the Town of Nottingham and Thomas Ballesterio. See Decision and Findings, Section 5. The pending Motions for Rehearing fail to raise issues concerning the Town of Nottingham's comments that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

12. Consistency with Law and Regulation

Nottingham has asserted that Environmental Services acted unlawfully or unreasonably to the extent it found that USA Springs' submittal is consistent with the law and regulations (Nottingham p. 25). The Permit and Decision and Findings substantively address Environmental Services' findings regarding the applicability of the large groundwater withdrawal law and rules. The pending Motions for Rehearing fail to raise issues concerning consistency with applicable laws and regulations that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

13. Incomplete Permit Application

Barrington has asserted that Environmental Services acted unlawfully or unreasonably by accepting an incomplete permit application (Barrington p. 2). The permit requirements and the completeness of the application were addressed by Environmental Services in the Decision and Findings, Sections 2-4. The pending Motions for Rehearing fail to raise issues that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

14. Two-Step Process

Barrington has asserted that Environmental Services acted unlawfully or unreasonably by failing to comply with a two step process (Barrington p. 5). The two steps alleged by Barrington are (1) the information is complete and correct; and (2) the data demonstrates that the withdrawal will not produce adverse impacts or will result in adverse impacts that can and will be mitigated. Barrington p. 6. Both of these issues are addressed above in this Decision (Sections 13 and 6). The pending Motions for Rehearing fail to raise issues concerning the review of the USA Springs application that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

15. Page's Well as a Community Water System

Page has asserted that Environmental Services acted unlawfully or unreasonably by identifying the well on the Page property as a private well (Page p. 1). A community water system is defined by RSA 485:1-a as "a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents." The description of the Page water system described in the Page Motion for Rehearing is not a community water system. Under New Hampshire law, it is a private water system. The pending Motions for Rehearing fail to raise issues concerning the status of the Page well that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

16. Ex Parte Communications

SOG has asserted that Environmental Services acted unlawfully or unreasonably by holding *ex parte* meetings with representatives of USA Springs (SOG p. 2). Environmental Services had several meetings with representatives of USA Springs. In addition, Environmental Services held meetings requested by SOG or other parties opposed to the permit application. A permit application is a non-adjudicative process. In any permit process, it is common for Environmental Services to discuss a permit application with the applicant. Environmental Services also receives verbal and written comments from abutters or other interested parties on most of its permits. In order to implement SOG's requirement of no *ex parte* communications for permits, Environmental Services would be required to notify all interested parties before it could communicate with anyone regarding a permit. Such a system would render any permit

process impossible to implement, and is not required by law. Thus, the appellants have not raised good reason to grant rehearing on this issue.

17. RSA 91-A Document Request

SOG has asserted that Environmental Services acted unlawfully or unreasonably by failing to provide documents requested under RSA 91-A (SOG p. 3). Environmental Services has been responsive to all RSA 91-A requests. The USA Springs file has been made available to numerous people seeking review. Many of those requests have not been made in writing. The only documents not provided as part of the public file are those documents subject to the attorney-client privilege. Thus, the appellants have not raised good reason to grant rehearing on this issue.

18. Fair and Open Process

SOG has asserted that Environmental Services acted unlawfully or unreasonably by failing to conduct the permitting process in a fair and open manner (SOG p. 3). Environmental Services has struggled throughout the permit process to keep a large number of interested citizens updated and involved throughout the process. Section 2 of the Decision and Findings describes the various public hearings and meetings held by Environmental Services personnel. Those meetings have typically been in the evening and in the local towns to encourage full attendance. The public hearings and meetings have been well attended, and everyone who has wanted to speak has been allowed to do so. A significant number of written comments have been received throughout the process. In addition, as workload has allowed, various personnel at Environmental Services have been available to discuss the status of the permit with anyone who has contacted the agency by telephone. Thus, the appellants have not raised good reason to grant rehearing on this issue.

19. Future Home Construction

SOG has asserted that Environmental Services acted unlawfully or unreasonably by failing to take into consideration the impact of future home construction (SOG p. 5). Environmental Services addressed this issue in its Decision and Findings. See Decision and Findings, Section 5.7. The pending Motions for Rehearing fail to raise issues concerning future area development that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

20. Adverse Impacts

SOG has asserted that Environmental Services acted unlawfully or unreasonably by failing to respond to SOG's demonstration of adverse impacts (SOG p. 6). SOG's Motion for Rehearing fails to specify what claims of adverse impacts Environmental Services is alleged to have overlooked. Environmental Services addressed issues related to adverse impacts in its Decision and Findings. See Decision and Findings, Section 5. In addition, the Permit requires continuous monitoring and demonstration of no adverse impacts and mitigation of impacts through the life of the Permit. The pending Motions for Rehearing fail to raise issues concerning adverse impacts that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

21. International Trade

SOG has asserted that Environmental Services acted unlawfully or unreasonably by failing to account for the State's ability to modify or withdraw a permit due to international trade agreements (SOG p. 8).

Environmental Services addressed issues related to adverse impacts in its Decision and Findings. *See* Decision and Findings, Section 5.17. Permit conditions allow Environmental Services to modify or termination of withdrawals. *See* Permit, Conditions 5-6. The pending Motions for Rehearing fail to raise issues concerning international trade agreements that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

22. Misleading or Discriminatory Actions

SOG has asserted that Environmental Services acted unlawfully or unreasonably by committing misleading and discriminatory actions (SOG p. 9). SOG specifically cites to statements that address contamination at the adjacent former Harnum site. As is contained in the Record, the owner of the former Harnum site, Just Cause Realty Trust, modified its remediation plan from containment to complete removal. In its first application, the applicant, USA Springs, stated an intent to pump water while contamination at the adjacent Harnum site was contained. In the Permit that was issued on July 1, 2004, USA Springs is prohibited from pumping until groundwater contamination levels meet AGQS. The concerns raised by a contained contaminant plume are reasonably and lawfully addressed if the Permit prohibits water withdrawal while the adjacent groundwater is contaminated.

These concerns were addressed in the Decision and Findings, Sections 4.3 and 5.10. The pending Motions for Rehearing fail to raise issues concerning misleading or discriminatory actions or the Harnum property contamination that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

23. Adjudicative Hearing

Nottingham and SOG assert that Environmental Services acted unlawfully or unreasonably by failing to hold an adjudicative hearing (Nottingham p. 26; SOG p. 10). The large groundwater withdrawal permit application process is governed by RSA 485-C:21, which requires a public hearing rather than an adjudicative hearing. Compare RSA 162-H:10, requiring both "informational" and "adversary" hearings for energy facility certificates. Throughout the permit process, Environmental Services received requests for public hearings. Environmental Services has held public hearings or meetings on June 18, 2001, July 17, 2001, August 1, 2001, August 29, 2002, October 14, 2003, February 5, 2004 and April 7, 2004. The extensive public input into the Permit was addressed in the Decision and Findings, Section 2. Further, none of the appellants requested an adjudicative hearing while the USA Springs permit was pending. Nottingham's and SOG's request for an adjudicative hearing was not received until after the Permit was issued. Thus, the requests for an adjudicative hearing not only do not apply to the large groundwater withdrawal process, they were not timely filed.

The pending Motions for Rehearing fail to raise issues concerning public hearings that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

24. Mendums Pond and Little River

Mr. Conklin asserts that Environmental Services acted unlawfully or unreasonably by failing to properly address impacts to Mendums Pond or the Little River. Mendums Pond was in the study area. Impacts related to Mendums Pond, the Little River, water bodies within the study area, and water bodies outside the study area, were all addressed in the Decision and Findings. *See* Decision and Findings, Sections 5.5, 5.6, 5.7, 5.8, 5.14

The pending Motions for Rehearing fail to raise issues concerning Mendums Pond and Little River that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on this issue.

25. Comments by Thomas P. Ballestero

Attachment B of the Nottingham's Motion includes an evaluation by Thomas Ballestero of portions of the Decision and Findings. Mr. Ballestero's comments do not demonstrate that unmitigated adverse impacts or irreversible adverse impacts will occur.

The majority of the critical comments by Mr. Ballestero are in the context of the withdrawal operating at 307,528 gallons per day, but do not recognize that the withdrawal rate, as prescribed by the Permit, is adjusted in response to precipitation trends or environmental measurements. Thus, withdrawal under the Permit must be conducted in a sustainable manner, and in accordance with State law and regulations. Environmental Services has implemented the same impact assessment methodology, reporting and mitigation requirements at other anisotropic large groundwater withdrawal sites. Adverse impacts at those other sites have been avoided or mitigated. Environmental Services is unaware of any occurrences of unmitigated adverse impacts that have occurred at any other sites permitted in accordance with Env-Ws 388.

In general, Mr. Ballestero's comments are addressed in the Decision and Findings, and need not be responded to on a point-by-point basis. Some of Mr. Ballestero's comments are addressed in general below.

Env-Ws 388 requires that impacts be assessed under maximum pumping conditions with no net recharge to groundwater. USA Springs completed this analysis under drought conditions of 180 days with no precipitation. This analysis, which was more conservative than that required by Env-Ws 388, indicated that adverse impacts could occur, and therefore the Permit contains a comprehensive set of conditions that proactively mitigate adverse impacts for all water users and water resources. The Permit contains stringent conditions that ensure no unmitigated adverse impacts will occur. This is articulated in the Decision and Findings, and meets the requirements of Env-Ws 388. As described in the Section 4.1.2 of the Decision and Findings, the Permit issued to USA Springs exceeds the legal requirements of avoiding and mitigating adverse impacts.

Impact assessments to surface water bodies are addressed thoroughly in Section 5.6 and 4.1.3 of the Decision and Findings. Permit conditions 5b, 5c, and 6e ensure that unmitigated adverse impacts do not occur.

In his analysis, Mr. Ballestero assumed that drawdown occurs uniformly from a fixed point with a radius of 7000' under an isotropic aquifer condition. This type of drawdown could only occur in an isotropic aquifer with a flat gradient. The withdrawal test data support an anisotropic rather than isotropic condition. Anisotropic means "having some physical property that varies with direction" and is generally not a random hydrogeologic condition. The actual withdrawal test data at the USA Springs site clearly demonstrate anisotropic flow patterns with preferential drawdown primarily in an easterly direction of the site at a distance of up to 1.3 miles in that direction. An environmental monitoring program can be successfully implemented for a hydrologic system that is anisotropic by using monitoring points consistent with the system orientation. The Permit requires monitoring locations that reflect the preferential flow directions established by the withdrawal test. The Permit also contains a stringent and substantial monitoring, reporting, and mitigation program that further reflects the orientation of the established hydrogeologic system.

USA Springs conservatively calibrated pump test data and water level elevation measurements to remove the effects of precipitation impacts on water levels at monitoring points, measured prior to and during the withdrawal. USA Springs did not estimate recharge rates to the aquifer with this data, and instead relied on published values typical of similar hydrogeologic settings as described in pages 19-23 of the Decision and Findings. This is standard industry practice and is acceptable to the Department.

Mr. Ballestero utilizes water table fluctuation methods to estimate recharge.³ This approach is not well supported in the scientific literature for the conditions at the USA Springs site. Specifically, these methods are rarely applicable to confined systems and deep bedrock aquifers such as exist at the USA Springs site. Furthermore, Mr. Ballestero has estimated an annual recharge at 0.08 inches, which is not consistent with typical recharge rates observed in New England and used as standard industry practice for analysis of these systems. See Section 5.1 of the Decision and Findings. Also, his estimation method does not recognize the complex nature of recharge to confined aquifers under static and pumping conditions, as described in Section 5.1 of the Decision and Findings. Environmental Services has recognized these complexities and provided Permit conditions that ensure that withdrawals are managed conservatively to ensure that no unmitigated adverse impacts occur.

Environmental Services addressed the issue of derivative plots in its Decision and Findings, Section 5.3. The use of these plots is not standard or required by Env-Ws 388. Mr. Ballestero provides textbook and technical references that discuss many methods and applications for derivative plots. Mr. Ballestero does not cite which analytical method he used to complete the derivative plots. The equations used in the spreadsheet to complete the calculations, when compared to the references, could not be reconciled by Environmental Services.

Derivative plots require "clean" data sets to effectively plot the incremental change in water level over time and not just the water level over time. It is untrue that if data is too noisy for derivative plots then it is too noisy to for other types of analysis. Mr. Ballestero has not provided information that addresses the problems identified on page 32 of the Decision and Findings. In addition, the trends shown by Mr. Ballestero in his graphs of water level drawdown in P-1s and P-1d are inconsistent with actual water level measurements.

The Little River sub watershed is only one of ten sub watersheds that contribute water to the Lamprey River, and is 20.5 square miles in area. Nottingham's technical comments and stream flow analysis assume the Little River Watershed is twelve square miles. The area of a watershed and precipitation are important variables when estimating stream low flow using a watershed ratio/comparison method. Thus, the assumptions need to be accurate for such assessments to apply to a permit application. Environmental Services relied upon actual data obtained for the Little River watershed.

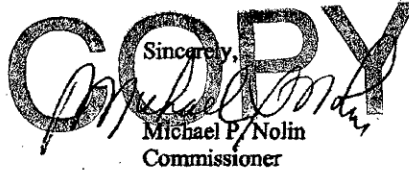
The comments by Mr. Ballestero attached to Nottingham's Motion for Rehearing fail to raise issues that Environmental Services overlooked or mistakenly conceived in its original decision. Thus, the appellants have not raised good reason to grant rehearing on these issues.

Conclusion

For the reasons stated above, the Motions for Rehearing by the Towns of Nottingham and Barrington, Save Our Groundwater, Steven Conklin, James Page, Thomas Marshall and Robin Marshall are denied.

³ Mr. Ballestero states that the pumping test data does not show recharge. This is because the data was corrected to estimate impacts under the condition of 180 days of pumping at the maximum level with no recharge to groundwater.

Any party aggrieved by this Decision may appeal in accordance with RSA 485-C:21 and RSA chapter 541.

COPY
Sincerely,

Michael P. Nolin
Commissioner

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